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Congressional Information Service
Washington, D.C.

101st Congress
1st Session
COMMITEE PRINT
S. Prt. 101-48

SERIOUS PROBLEMS CONTINUE IN THE NUCLEAR REGULATORY COMMISSION'S INTERNAL INVESTIGATIONS

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

AUGUST 1989

Printed for the use of the Committee on Governmental Affairs

20-491
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S402-7

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I. INTRODUCTION

The Governmental Affairs Committee (GAC) is charged with "studying the efficiency, economy and effectiveness of all agencies and departments of the Government." Since February 1989, the Committee's staff, at the direction of Chairman Glenn and Ranking Minority member Senator Roth, has been examining aspects of the operation of the Nuclear Regulatory Commission's (NRC) internal investigation office. The NRC is responsible for the safe operation of commercial nuclear power stations in the United States. This review has focused on the activities of the NRC's Office of Inspector and Auditor (OIA). OIA conducts investigations of NRC employees when allegations of misconduct are received. In particular, the Committee has reviewed OIA conduct in the investigation of allegations made by Douglas Ellison, a former employee of an NRC licensed utility. Ellison's allegations led OIA to conduct an investigation directed at Roger Fortuna, Deputy Director of the NRC's Office of Investigation (OI). OI's mission is to investigate allegations of misconduct by NRC licensees. Thus, despite their similarity in names OIA (internal investigations) and OI (licensee misconduct) have completely different investigatory responsibilities. The Committee's investigation included the inspection of thousands of pages of documents, the taking of depositions under oath from four NRC employees, and numerous other witness interviews and conferences.

In summary, we find the particular OIA investigation we reviewed: (1) was pursued in a questionable manner; (2) created the appearance that the investigation was motivated as much by reasons of personal and professional animosity between NRC personnel as it was by the legitimate needs of the NRC; (3) was conducted in a manner which was unfair to the NRC employee (Fortuna) who became the "target" or "subject" of the inquiry; (4) violated inspector general principles by involving NRC management to an inappropriate degree in the conduct of the investigation; and, (5) represented a waste of government funds. In sum, we found very little reason for the course of conduct of this investigation.

II. FACTS

1. Ellison's First Contact with OIA, NRC

In December 1986, Douglas Ellison, at that time an Instrument and Control Technician at the Nine Mile Point Unit I nuclear power facility in New York State operated by Niagara Mohawk, wrote letters to the Office of Investigations (OI) and to the Office of Inspector and Auditor (OIA) at the Nuclear Regulatory Commission (NRC) to complain that a number of allegations he made in 1986 to NRC Region I personnel concerning safety and wrongdoing issues at Nine Mile Point had been mishandled and/or inadequately addressed by NRC's Region I staff. (Again, OI has the responsibility to investigate wrongdoing on the part of NRC licensees who build or operate nuclear power plants.) Ben Hayes, Director of OI, referred the matter to Sharon R. Connelly, Director of OIA, inasmuch as OIA is responsible for handling allegations of NRC employee misconduct, and Ellison's new allegations were directed against NRC personnel.

Ellison was contacted by an OIA investigator in January 1987 to follow up his letter, but Ellison refused to be interviewed, even after a telephone call from Connelly.[1] Ellison wrote OIA again in mid-January, and as a result, OIA staff interviewed an OI official in Region I concerning the status of the investigation into Ellison's safety and wrongdoing allegations. Connelly advised Ellison in a March 1987 letter to contact OIA when he changed his mind about being interviewed.[2] No OIA representative offered Ellison money for his information or services at that time, although as this report describes, the NRC would eventually place Ellison on its "consultant" payroll to obtain his cooperation and physical "evidence" in his possession.

2. Ellison's Dire Financial Situation

Ellison left his employment with Niagara Mohawk in April 1987 as part of a $25,000 settlement of his harassment and intimidation complaint against the utility filed with the Department of Labor.[3] During the course of his "whistle blowing" against Niagara Mohawk Ellison did provide credible evidence concerning problems at Niagara Mohawk's Nine Mile nuclear facility. This evidence led to a fine against Niagara Mohawk by the NRC.[4] Ellison then moved to Florida where he soon encountered financial difficulties. In 1988, Ellison began his efforts described below to sell information to raise cash for himself and his family by contacting representatives from Niagara Mohawk; a private citizen named Steven Comley; and finally the NRC. Comley is a nursing home owner and operator from Rowley, Massachusetts, who has been an activist on nuclear safety issues, particularly as they relate to the Seabrook power plant. From about September 1986 through April or May 1987, Comley and Ellison had worked together on nuclear safety issues; subsequently, as this report will describe, they stopped working together.

Sometime after March 1988, Ellison contacted Niagara Mohawk about being hired as a consultant by the utility: Ellison proposed that if he were hired, he would tell the NRC that the Nine Mile Point facility was being operated properly by Niagara Mohawk and that the utility was doing a good job. Ellison's taped conversation with a utility employee shows that he did seek $5,000 from Niagara Mohawk for what he called his "memoirs", including information on tape concerning alleged drug use at Nine Mile Point by Niagara Mohawk employees.[5] The Committee reviewed transcripts of surreptitiously recorded telephone conversations Ellison made which describe these efforts.[6] Ellison stated in this conversation that the New York State Department of Law, as well as the U.S. Attorney for the Southern District of New York were interested in his information, and he threatened to give it to them if the utility did not buy it.[7] Ellison wanted the utility to show it was serious by using Federal Express or Western Union to send him $2,500 in advance.[8]

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[1] Deposition of Resner at 11; Connelly letter to Ellison, March 5, 1987.
[2] Ibid. NRC documents 278-1, 2, 3.
[3] NRC prepared transcript of Ellison-Comley telephone call, NRC document 278-1 *et seq.* at 23.
[4] Stello letter to GAC, April 14, 1989.
[5] NRC prepared transcript of Ellison tape, NRC document 279-10.

In July 1988, Ellison further confirmed these efforts when he telephoned Comley and said that he had gone to Niagara Mohawk seeking to sell information to the utility.[9] Ellison stated he wanted $5,000 from Niagara Mohawk and $10,000 from the NRC for this information, but that he would be willing to sell it to Comley for $5,000.[10] Ellison stated he was "desperate" for money and that he was going to be evicted. Ellison also asked Comley to locate a wealthy philanthropist to forward Ellison $5,000.

Neither Niagara Mohawk nor Comley agreed to buy Ellison's information.

In the words of one NRC official intimately involved in OIA's investigation, James Blaha, at this time Ellison "was trying to peddle the information to anybody who he could sell it to." [11] He found his buyer in the NRC.

3. Ellison's Second Contact with OIA, NRC

On August 5, 1988, Ellison telephoned OIA and according to a secretary's notes, left a message for Sharon Connelly "re: phone conversation he had w/you on 1/8/87 and also two letters he received from you referencing Regulatory Breakdown he spoke with you about as well as criminal misconduct re: Roger Fortuna." [12] Donna Rowe, an OIA investigator, returned his call. According to Rowe's memo regarding the telephone conversation, Ellison made allegations involving breach of confidentiality against a former NRC Commissioner and a member of the Commissioner's staff, an OI official in Region I, and Roger Fortuna, the Deputy Director of OI.[13] The specific allegations against Fortuna were:

> Criminal misconduct of Roger Fortuna, OI, NRC, by discussing and sharing Ellison's case [i.e., the incident of his October 1986 arrest on sexual misconduct charge] with unauthorized third parties, not employed by the NRC or the utility, on or about January 14, 1987; and
>
> Criminal misconduct of Roger Fortuna, OI, NRC, by discussing and sharing sensitive and confidential NRC information and strategies in reference to several OI investigations with unauthorized third parties outside of the NRC, on or about January 14, 1987.[14]

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[6] Ibid.

[7] NRC prepared transcript of Ellison-Comley conversation. NRC document 278-1, *et seq.*

[8] Ibid., at 26 and *et seq.*

[9] Ibid., *et seq.*

[10] Ibid., 278-29, and *et seq.*

[11] Deposition of Blaha at 40.

[12] NRC document 303.

[13] Rowe's Memo of August 5, 1988, NRC document 86-1, *et seq.*

[14] Ibid.

Ellison told Rowe that he was ready to be interviewed and could provide proof to support his allegations.

Rowe's memo was routed to Connelly's office to be logged in and referred to Mark Resner, Assistant Director for Investigations, OIA. Resner decided that an "Inquiry", an initial stage of OIA investigation, should be made concerning Ellison's allegations, and he dispatched two OIA investigators, Rowe and Charles Kraus, to Florida to interview Ellison.[15] In his deposition by Committee staff, Resner, testified that he decided to send Kraus, a male investigator, to accompany Rowe because they knew at that time that Ellison "had been charged with sexual molestation of a young girl or young woman." [16] Normally, the background of a witness alleging violations of nuclear safety would not matter, particularly if some objective evidence can be provided by the NRC to substantiate the claim. However, where the allegations relate to the more subjective conduct of NRC officials, Ellison's credibility as a witness is far more important. As will be discussed at length in this report, Ellison's personal credibility was a vital issue in assessing the nature of the allegations he was making against Fortuna, and the lawfullness or illegality of how those allegations were supported through telephone recordings Ellison obtained. Neither Connelly nor Resner ever made any attempt to get additional information about the case from the District Attorney who handled Ellison's case.

Had Connelly or Resner checked with the District Attorney's office, they would have learned that in October 1986, Ellison was charged with sexually molesting his thirteen year old babysitter in 1985.[17] He pleaded guilty to a lesser included offense in 1987, after he had moved to Florida.[18] In addition, they would have learned that other minors, a male and a female, had provided sworn statements to the District Attorney in October 1986 alleging that Ellison had engaged in other instances of sexual misconduct.[19] The District Attorney provided the affidavits of these minors to the Committee for its review. However, no charges were filed against Ellison on the basis of these other statements.[20] Ellison denies he committed the offense for which he pled guilty, and denies any other such incident took place.[21]

4. *First Interview with Ellison in Florida*

Rowe and Kraus interviewed Ellison on August 17, 1988, at Ellison's home in Florida. Although Rowe and Kraus had arranged for a court reporter to be present, Ellison refused to have the interview transcribed.[22] According to Rowe's interview notes, as well as her personal account of the interview, Ellison would not cooperate fully with the investigation. Instead, he played excerpts from tape recordings of various conversations, including a taped telephone conversation between Fortuna and Comley.[23] Rowe's notes indicate that Ellison provided details on how those NRC employees, whom he had named in the August 5th phone call, had breached his confidentiality, and he complained that the NRC had not adequately used the information he had previously provided in 1986. Ellison also discussed the issue of whether he had taken contaminated connectors when he left Nine Mile Point, but he would not confirm that he had them.[24] In effect, at this meeting Ellison implied he might have physical evidence of safety violations by the Niagra Mohawk utility. As will be discussed, this particular potential safety issue had already been dealt with by the NRC. Ellison was unwilling to share with Rowe and Kraus all the information in his possession at that time. Ellison told them that the NRC owed him compensation for "pain and suffering," and that he wanted a response from the NRC by noon that Friday. He threatened to "go public to the press." [25]

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[15] Deposition of Resner at 13.

[16] Ibid., at 14.

[17] Letter of Paul A. Carbonaro, District Attorney of Cayuga County, to the GAC; March 1, 1989.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Telephone interview of Ellison by Committee staff; March 9, 1989.

[22] Interview of Rowe by GAC staff.

[23] Ibid.

Connelly and her Deputy Director, Fred Herr, were briefed on the Ellison interview by Rowe and Kraus on August 22. Rowe's notes from the briefing state, in part, that Connelly directed that Mark Resner "call him [Ellison]: invite him up, expenses paid." Rowe's notes also state: "SRC [Sharon Connelly] is really interested in this . . . wants to hear the tapes. (If he won't come bec. of having to testify before a court reptr, tell him we'll do it w/out a court reptr." [26]

Connelly's notes indicate that on the morning of August 24, she spoke directly with Ellison by telephone during which Ellison stated that things were "tough", that he was "being booted out" of his home and that he was four months behind on his rent. He stated his desire for a $5,000 retainer for his consultant services, and he would come to D.C. with his complete files, including "suitcases of taped conversations" which would "take 3 days to go through." [27] In this telephone conversation, Ellison represented that Comley possessed 60 to 100 taped conversations of Fortuna.[28] (The Committee's investigation and this report, supra, indicate that subsequently OIA never attempted to obtain such tapes from Comley prior to the time Connelly's control of the case was turned over to other NRC officials in 1989.)

During the afternoon of August 24, Connelly spoke to Ellison's landlord , who said that Ellison was behind on his rent, and according to Ellison had told the landlord that "he was going back to work soon + she could call [Connelly] + verify." [29]

5. Connelly's Pursuit of Compensation for Ellison

OIA reports directly to the NRC Commissioners in order to preserve its independence to conduct investigations of all NRC personnel. Although OIA itself does not have the authority to issue a subpoena, OIA may request the Commission to exercise its broad statutory subpoena authority on its behalf. In her deposition to the GAC, Connelly testified that even before she went to Florida to interview Ellison on Aug. 29, 1988, she beleived that a subpoena of Ellison was not feasible.[30]

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[24] Ibid.
[25] Ibid.
[26] Rowes notes to file, 8/22/88. Copy supplied to GAC.
[27] NRC document 4-18.
[28] NRC document 4-17.
[29] NRC document 4-13.

A. First Contact with Office of the General Counsel

On August 24, shortly after her initial contacts with Ellison, Connelly contacted the Office of General Counsel (OGC) of the NRC and left a message for General Counsel William Parler. On August 25, Connelly spoke with Parler about whether it would be legally possible for her to have a small fund available to use at her discretion to pay informants. Parler stated that his immediate reaction was that there would be something wrong with that.[31] Parler indicated to Connelly that such a fund would have to be authorized. Parler had a vague recollection of an earlier memo prepared by his office of General Counsel for Ben Hayes, Director of OI, on this subject,[32] Parler then retrieved a 1986 OGC opinion and sent it to Connelly that same day with the following advice:

> I am not aware of any budget justification data in our existing authority which would authorize the establishment of such a fund. Please note, however, that until this matter is resolved generically, if a situation arises in which you determine that the availability of such funds has a direct connection and is essential to carrying out an investigation that relates to the agency's public health and safety mission, you should promptly provide the facts and seek OGC advice on the specific matter.[33]

B. Office of the Executive Director for Operations

On August 24 or 25, Connelly contacted Victor Stello, the NRC's Executive Director for Operations (EDO). On a day-to-day basis the EDO is the NRC's top career staff position. The EDO has the executive authority to direct NRC's employees to accomplish the NRC's mission. According to Stello, Connelly came to see him to solicit his help in an investigation she was initiating regarding new allegations by Ellison concerning wrongdoing by NRC employees, including Fortuna, and failure of the NRC to address safety issues he had previously provided in 1986 to the NRC. Stello recollects that Connelly also reported "that Ellison had additional safety allegations that had not previously been provided to the NRC." [34]

However, Stello's recollection of learning about "additional safety allegations" at this time does not appear to be supported by the contemporaneous record. Rather, the record of conversations OIA officials had with Ellison and notes of conversations between OIA officials and Ellison between 8/5 and 8/24 indicate that as of August 24, Ellison had not informed OIA of any specific safety allegations concerning Nine Mile Point that had not previously been provided to the NRC.[35]

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[30] Deposition of Connelly at 28.

[31] Interview of Parler by GAC staff.

[32] Interview of Parler by committee staff.

[33] Parler memo of August 25, 1989 to Connelly. NRC document 629-1; reprinted in full in the Appendix to this report.

[34] Stello letter to GAC, April 14, 1989; Reprinted in full in the Appendix to this Report.

[35] See Connelly's notes, NRC document 35-1 *et seq.;* Rowe memo of August 5, 1989; Blaha deposition at 70.

According to Stello, Connelly also discussed with Stello whether Stello had the authority to enter into a contract with Ellison to reimburse him for spending the time and effort to explain his allegations.[36]

On August 25, in response to Connelly's request for assistance and in Connelly's presence, Stello called James Blaha, who was then serving a three-month rotational assignment in the NRC's Office of the Secretary, to ask about Blaha's availability for a special assignment (to assist in the Ellison matter) for a period of a couple of weeks. (Blaha was scheduled to be appointed Assistant for Operations, Office of the Executive Director for Operations, on November 1 following completion of the rotational detail.) Blaha indicated his availability to Stello. Blaha testified that, when Stello asked for his assistance, Stello delineated three reasons for Blaha's involvement and role in an OIA investigation: (1) the financial arrangements that had to be set up, particularly making payments to Ellison; (2) Stello needed someone he could trust; and, (3) he needed someone who could look at whatever technical or safety issues were there.[37] This special project, Stello informed Blaha, had to be kept highly confidential. Blaha stated that at this meeting, he was given virtually no information relating to the substance of the investigation or the identity of the subject of the investigation, Roger Fortuna. He did learn that Ellison had made clear to OIA that "he [Ellison] would not, could not spend his time and cooperate unless he was paid." [38]

Blaha testified that he was familiar with setting up contracts and making financial arrangements and had "enough experience with allegations and with the technical issues that I could surface any problems in those areas that we came across." [39] However, Blaha conceded that he had never worked as a contracting officer or a procurement officer; though he had experience dealing with these areas, he had not drafted or executed contract documents himself. Blaha had also never worked in a technical position (dealing with nuclear health and safety) in the NRC. During his deposition by the GAC, Blaha acknowledged that he was good at cutting through bureaucratic red tape and getting things done. Blaha stated that during his participation in the investigation, on several occasions he had to consult Stello about the technical issues Ellison raised because he, personally, could not determine if these issues were of significant safety concern.[40] Blaha testified that he and Stello "did not discuss getting a technical person involved." [41] Although there was a trained Nuclear Engineer on staff at OIA who was available to review the technical aspects of Ellison's information, OIA Director Connelly never enlisted him to evaluate any technical information, because in her view, she did not need technical assistance as much as she needed administrative assistance.[42]

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[36] Stello letter to GAC, April 14, 1989.

[37] Blaha deposition at 23.

[38] Ibid., at 41.

[39] Ibid., at 28.

[40] Ibid., at 23.

[41] Ibid., at 69.

[42] Connelly deposition at 25.

This administrative support included the acquisition of aduio tape copying equipment, court reporter services, computer support, video player equipment, and contract assistance. The failure to obtain or utilize trained technical personnel to assist in the "safety" aspects of the Ellison investigation undercuts the claims, discussed supra, that "nuclear safety" was the crux of the investigation.

In his own words, Blaha "participated in the whole process."[43] Blaha became an administrative expediter for Ellison's soon to be issued NRC consultant contract, not a trained technical reviewer of any information having health and safety significance. In effect, a special assistant to the EDO, a top management official, would be a direct participant in an OIA investigation, continuously reporting back to the EDO.

C. Meeting with EDO and OGC

On August 26, Parler was called to a meeting with Stello and Connelly. Stello admits in his letter to the GAC that he did not discuss with Parler specifics concerning the proposed contractor [Ellison] or the subjects of the investigation [Fortuna]; he did point out that the contractor [Ellison] had previously provided safety allegations concerning Nine Mile Point which had been substantiated in part, particularly the allegation concerning use of an unqualified reactor connector, which Ellison had discussed with OIA's Rowe and Krause.[44]

Parler recollects that he was told nothing specific about the informant's identity or OIA's inquiry.[45] Stello told Parler that there was information they (Stello and Connelly) had become aware of from an informant, that he (Stello) had asked a technical reviewer to examine it in part, and that in that technical reviewer's judgment, there was something in that information that could have safety implications.[46] From this representation, Parler had a clear impression that a third person, trained as a technical reviewer, had reviewed, at Stello's request, specific information already received from the informant and preliminarily concluded that there were safety implications.[47]

Stello and Parler agreed that there was a discussion of alternative ways of getting the information. Parler asked why the information could not be obtained voluntarily.[48] Connelly told Parler that the informant would not volunteer the information. Parler reminded Stello and Connelly of the NRC's broad subpoena authority and asked why it couldn't be used.[49] Connelly cited two reasons for avoiding the subpoena route: (1) fear that the information would be destroyed; and (2) the desire to obtain not only the information, but the services of the informant to explain the information as well as the implications of the information.[50]

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[43] Blaha deposition at 182.
[44] Stello letter to GAC, April 14, 1989.
[45] Interview with Parler by GAC staff.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Connelly deposition at 28-29.

However, there was no evidence at that time that Ellison had threatened to destroy his information. To the contrary, he was threatening to "go public to the press".[51] Connelly did not tell Parler that Ellison was unemployed and broke, and that he had flatly refused to cooperate unless he got paid. Nor did she mention Ellison's criminal law problems.[52]

Parler concluded that there was authority to enter a contract if all of the following conditions were met: that the safety basis for getting access to the material could be fully documented; that neither the voluntary approach nor the subpoena route was available; that funds were available; and that applicable procurement procedures were followed.[53] Parler was not asked to reduce his advice to a writing.[54]

D. Meeting with EDO and Blaha

During his deposition by the GAC, Blaha testified that in a second meeting on August 26 with Stello and Connelly, he was told the following facts: that Ellison had alleged that Fortuna was divulging information that he should not have divulged to parties outside the NRC; that two OIA investigators had interviewed Ellison and heard excerpts of a taped telephone conversation between Fortuna and Comley which Ellison claimed was evidence supporting his allegation against Fortuna; and that Ellison wanted compensation in exchange for his information. Blaha has testified that Stello, either by himself or in concert with Connelly, expressed the desire for further reassuarance that a contract with Ellison was necessary.[55] Connelly and Stello then decided that Connelly, Resner, and Blaha would go to Florida to interview Ellison. The consensus of the meeting, and Stello's position, was that a final decision would be made following the interview about whether to proceed with a contract.[56] On that same day, Blaha made initial inquiries to Ronald Scroggins, Comptroller, and Ed Halman, Director of Contracts, NRC, reagarding the preparation of a contract.[57]

6. Second Interview with Ellison in Florida

Connelly, Rosner, and Blaha traveled to Florida on August 29 to interview Ellison in his home. During that interview, according to Blaha, "frequently Ellision would talk, and he would pull out tapes to reinforce points, some of his allegations. . . ."[58] Blaha testified that they saw boxes of tapes, videos, and other physical evidence which Ellison claimed substantiated his allegations, but they did not review all of it.[59]

Blaha testified that in Florida, Ellison claimed to have other allegations about safety problems at Nine Mile Point that he had not previously provided to Region I or Niagara Mohawk, but Blaha was not able to document them on the trip to Florida.[60] Blaha recalls that the "new" technical allegations were "general" and that he did not get details on them. A review of the contemporaneous notes taken by Blaha, Connelly, and Resner in Florida reveals that Ellison spoke at length about several of the safety allegations he had previously made to the NRC's Region I, e.g., the use of "unqualified" reactor connectors (Items in critical places inside nuclear power plants are often required to be appropriately documented, and obtained only from qualified suppliers). According to Blaha's notes, Ellison made allegations that might qualify as "new safety allegations" in the sense that they may not have been previously provided to Region I:

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[51] Rowe memo of August 17, 1988.
[52] Interview of Parler by GAC staff.
[53] Ibid.; Parler memo of August 25, 1988, NRC document 629-1 *et. seq.*
[54] Interview of Parler by GAC staff.
[55] Blaha deposition at 36.
[56] Stello letter to GAC, April 14, 1989.
[57] Blaha deposition at 41, 131, 144.
[58] Ibid., at 56.
[59] Ibid., at 133.
[60] Ibid., at 59.

> 1. There had been a fire in the reactor drywell in 1986 which Niagara Mohawk had never reported to the NRC. On this issue, Ellison stated that he had previously provided Region I with raw material to support his allegation, in the form of log books, but he had not "flagged" the issue for Region I.
>
> 2. Drug use by Niagara Mohawk employees. On this issue, Ellison stated that he had recently informed Niagara of this allegation.[61]

It was during this interview that Blaha first learned of the sexual misconduct charge filed against Ellison. According to Blaha, "Ellison raised it . . . he went into quite a bit of detail about how that was a trumped up charge." [62] Connelly confirmed discussion of Ellison's arrest took place during the Florida meeting, and that Ellison "advised us that he had pled guilty to a lesser offense." [63] Ellison denied that he had engaged in misconduct.[64]

Blaha testified that Ellison "spent quite a bit of time convincing us about how destitute he was. He started very soon in our discussion showing us all of the bills he had. The fact that they were going to foreclose on his home, they were going to do all these things, and how he needed the money."[65] Citing these dire financial straits, Ellison insisted on payment in return for his information and claimed in addition that he wanted to be paid by the NRC for all of the "pain and suffering" that resulted from his "whistleblowing." [66] Blaha recalled in his deposition that Ellison was advised that although no payment for pain and suffering was available, the NRC could pay him as a consultant for his time.[67]

Blaha does not remember any attempt to talk Ellison into voluntarily turning over his information, and he did not hear any discussion of the possible use of a subpoena to obtain the information. According to Blaha, "we told him what we could do is pay him for his time. If he was prepared to come to D.C. and provide the tapes and explain the context and then we could reimburse him for the time. But we had to go back and discuss it . . . that that was something we wanted to do." [68] Connelly confirmed Blaha's testimony, stating "I indicated to him (Ellison) that if I could get the money approved that I would enter into an arrangement with him where we would compensate him for his information and for his assistance." [69]

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[61] NRC document 186.
[62] Blaha deposition at 49.
[63] Connelly deposition at 49–50.
[64] Blaha deposition at 49; Transcribed interview of Ellison, September 12, 1988, by OIA.
[65] Blaha deposition at 65.
[66] Ibid., at 60.
[67] Ibid., at 35, 40, 41, 61. Connelly deposition at 35.
[68] Blaha deposition at 61.

Upon their return to D.C., Connelly and Resner began to take steps to assure that no one else throughout OIA and the rest of the agency learned of it. An example of this activity includes Mark Resner telling one NRC employee that Ellison "didn't really have anything. We're just goint to put a memo to file and close it out." [70] (Indeed, on OIA's books, the case remained an OIA preliminary "Inquiry" up until February 9, 1989, when Resner retroactively converted it to a full-blown "investigation" through paperwork.) [71] Other examples are discussed in this report in the chronological order which they occurred.

7. *EDO's Authorization of Ellison Consultant Contract*

On August 30, Connelly, Resner, and Blaha briefed Stello on the trip to Florida. Connelly reported to Stello that Ellison has provided enough information to merit further investigation. Ellison had given Connelly a handful of tapes (four or five), and she played some of them, in whole or in part, for Stello.[72] According to Blaha, of greatest concern to Connelly was a tape-recorded conversation between Roger Fortuna and Comley. Blaha recalls Stello's reaction: "I think he felt that based on what he heard on the tapes that there was evidence that [Fortuna] was, unless some overriding explanation could be given, that he was discussing agency business with an outside official, and that was inappropriate for an official in his position, that was the basis for proceeding with the investigation." [73]

Stello's perceived authority to grant or cancel Ellison's consultant contract meant that he had the final approval or disapproval as to whether OIA proceeded with the investigation as planned by Connelly. Connelly insisted that payment in exchange for the material and Ellison's services was necessary, which she formally documented for Stello by signing a justification memo drafted for her by Blaha and dated September 1.[74]

Stello recalls being briefed by Blaha "that there was additional information regarding new safety allegations for Nine Mile Point Unit I." [75] Stello recollects that he was informed of the two allegations relating to failure to report the 1986 reactor drywell fire at Nine Mile Point and drug use as well as several specific other "new" allegations, e.g., pump switches that may not work.[76] Stello claims that Blaha was able to document a series of health and safety concerns which warranted further investigations.[77] There are no confirming notes. Blaha recollects that he didn't speak to Stello at this time about the pump switches because: "[E]ssentially we had one day in Florida to kind of drink out of a fire hose of all this information, and the question is there enough here that we are really compelled to pursue it." [78] Details about the "new" allegations were documented by Blaha only after Ellison was brought to Washington to be interviewed again in September 1988 under a consultant contract.[79]

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[69] Connelly deposition at 109.
[70] Interview with Donna Rowe by Committee staff.
[71] Resner deposition at 48, 51.
[72] Blaha deposition at 67.
[73] Ibid., at 158.
[74] Connelly memo of September 1, 1986. NRC document 190-16.
[75] Stello letter to GAC, April 14, 1989.
[76] Ibid.
[77] Ibid.

According to Stello, Nine Mile Point Unit I had been shut down since December 1987 but was projected to start up again in the fall of 1988. Because he felt it important to "promptly" pursue these safety allegations before startup, on August 30 Stello approved the Ellison consultant contract and establishment of an imprest fund for payment under the contract. Stello also approved "the suggestions that Mr. Ellison be paid in cash since the cutting of government checks could have compromised the confidentiality of Mr. Ellison's name." [80]

On August 30, Blaha provided general information to Edward Halman, Director, Division of Contracts, about the consultant services being sought and directed him to draft language for the contract. Ronald Scroggins, Comptroller, provided the appropriation and allotment number for use in the contract and assistance in establishing the imprest fund. [81] Connelly herself then typed the contract from the draft prepared by Halman, and Ellison's name was covered up when Halman signed the final document as the Contracting Officer so that he could not view it.[82] Connelly was listed in the contract as the Project Officer.

The contract, executed in the form of a Purchase Order dated September 1, 1988, included the following terms: compensation at the rate of $40 per hour for work performed under the contract to be paid at three intervals; reimbursement for subsistence (housing and meals) at the fixed rate of $117 per day; and reimbursement at actual cost for other expenses such as transportation. The stated objective of the contract was "to obtain information which will assist NRC in determining whether and to what extent wrongdoing has occurred on the parts of NRC employees and the extent to which such activity may have jeopardized the safety of the public." [83] As part of the contract, Ellison agreed not to discuss the contract with any other persons.[84] Ellison did not request nor did the NRC grant confidentiality to him.[85]

A $10,000 fund was established on August 31 with monies from Financial Identification Number (FIN) B8169, "Support of DEDROGR". The potential coincidence of naming the fund with Roger Fortuna's name was reviewed. Blaha testified, and the Commission in its letter response to the committee's inquiry asserts, that "DEDROGR" is an acronym for the Deputy Executive Director for Regional Operations and Generic Requirements, one of two Deputies to Stello the EDO at the time. According to the Commission, this particular position was abolished in February 1989,[86] and Blaha and Connelly claim that the use of that particular FIN was purely coincidental.[87] Comptroller Scroggins claims that the use of this FIN was "an administrative convenience since it had been in existence for the last few years." Scroggins further asserts that the staff who selected FIN B8169, "Support of DEDROGR", had no knowledge that Roger Fortuna was the subject of the investigation.[88] Although Blaha was the subcashier of the imprest fund, Stello maintained ultimate control over the imprest fund and all payments made from it.[89]

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[78] Blaha deposition at 168.
[79] Ibid., at 59.
[80] Stello letter to GAC, April 14, 1989.
[81] Blaha deposition at 107.
[82] Ibid., at 109.
[83] NRC purchase order, 9/1/88. NRC document 86-73.
[84] Ibid.
[85] Blaha deposition at 90.

The Commissioners were never asked individually or as a part of the Commission as a whole to approve or disapprove the Ellison consultant contract.[90] However, they or their staff members were provided with periodic briefings, beginning in August 1988 concerning portions of the Ellison allegations.[91]

8. OIA's Contacts with the Commissioners' Offices re: Ellison

According to Commissioner Rogers, on August 18, 1988, Connelly told him that OIA was interested in pursuing an arrangement with Ellison whereby he would be compensated for turning over tapes relating to Fortuna. Rogers recalls that he questioned the propriety of this arrangement, and emphasized that a clear public health and safety issue must be present. Connelly provided Rogers with no facts concerning Ellison's background, history with the NRC, arrest for sexual misconduct, or financial condition.[92]

Connelly spoke to the Legal Assistants for Commissioners Carr and Roberts on August 24. She indicated that the allegations involved Fortuna and possibly other agency employees passing information to Ellison and Comley, and that OIA investigators had heard a portion of the tape recordings.[93] She advised them that while Ellison appeared to be "down on his luck and had an arrest for sexual molestation", he did have tape recordings.[94] Connelly emphasized that at that point in the OIA investigation, she was trying to see whether Ellison had any credible information.[95] Connelly indicated that she was convinced she might not get any farther with Ellison without some financial incentive, which had been suggested by Ellison, and she wasn't looking for a fund of more than about $5,000.[96] Connelly was advised to seek the General Counsel's advice on that matter. On August 25, Commissioner Carr's Legal Assistant was told that Connelly had spoken to General Counsel Parler and EDO Stello in general terms about establishing an informant's fund.[97]

On August 24, Connelly contacted a Technical Assistant to Chairman Zech to indicate that OIA wanted to establish an informant's fund. Connelly was advised to clear the matter with the General Counsel and that Commissioner Rogers was Acting Chairman while Zech was in the Soviet Union.[98]

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[86] NRC letter to GAC, April 14, 1989. (See responses to question 7.)

[87] Connelly deposition at 102, 104.

[88] Stello letter to GAC, April 14, 1989.

[89] Ibid.

[90] NRC letter to GAC, April 14, 1989.

[91] Ibid. Connelly deposition at 60.

[92] NRC letter to GAC, April 14, 1989.

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] Ibid.

[97] Ibid.

On August 26, Chairman Zech received a phone call in the Soviet Union from Commissioner Rogers concerning Connelly's request to establish an informant's fund. Zech and Rogers agreed that the General Counsel should be consulted.[99] On September 2, when Chairman Zech returned from the Soviet Union, he learned from Parler that, during Zech's absence, Connelly had initiated an investigation that she and Stello believed might have safety implications based on a limited technical review.[100] (When he spoke to Chairman Zech, Parler did not know of the trip to Florida made by Blaha, Connelly, and Resner on August 29).[101]

At Parler's suggestion, Zech questioned Connelly about the investigation. On September 2, Connelly told Zech that the consultant contract had already been signed and that the investigation involving Fortuna was proceeding.[102] This was the first time Zech knew Fortuna was a target and that tapes were involved. Connelly did not provide Zech with particular facts concerning Ellison such as his legal problems.[103] Upon learning that Parler had not been informed of the details or subject of the investigation, Zech directed Connelly to brief Parler.[104] That briefing took place on September 2 as well.

It appears that at no time during these conversations with the Commissioners' offices did anyone raise the subject of using a subpoena to obtain information from Ellison.

9. OIA's Third Contact with Office of General Counsel

According to Parler, on September 2, 1988, Connelly did not share a great deal of specific detail about the investigation, and she named only one NRC employee as the subject of the investigation—Fortuna.[105] Parler also recalled that although Ellison's name was mentioned during the briefing, Connelly did not share any information about Ellison's background with him, such as the fact that he had pleaded guilty to a sexual misconduct charge.[106]

Parler, aware of a history of problems over OIA investigations of OI personnel and of problems between Fortuna and Connelly, which will be discussed, supra, immediately warned Connelly that she would be viewed as being vindictive. He said that the "worst combination" that could have been put together was Stello and Connelly investigating Fortuna; that Connelly was starting with "unnecessary excess baggage" at the outset because of the history of tension between OIA and OI; and that she might find a logical explanation for Fortuna's behavior with individuals outside the NRC. Parler also recalled that when he learned that Fortuna was the real target, and it was Connelly and Stello who were in charge of the investigation, he advised the Chairman's office that it was a "no win" situation for the agency.[107]

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[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] Interview of Parler by GAC staff.
[106] Ibid.

When questioned about this matter in April, 1989, Parler stated, "Had I known on August 25, 198[8], what I subsequently learned in recent months I would have urged the Agency to proceed with the issuance of a subpoena if indeed the information was needed for a valid regulatory purpose." [108] In Parler's view, there was no legal impediment to the issuance of a subpoena. He further indicated that had he been told all the facts about Ellison, he would have changed his advice about the feasibility of the contract because when one is dealing with a consultant, in his opinion, one must deal with someone who is "responsible and credible".[109]

10. Past Friction Between OIA and OI, and Connelly and Fortuna

In 1987 this Committee held a hearing concerning the NRC which disclosed a level of personal animosity among senior NRC managers. For example, the head of OI, Ben Hayes, Fortuna's boss, testified that Victor Stello, Jr., the NRC's top staff member, shook his fist at the OI director in a threatening manner accompanied by threatening words. *See* S. Hrg. 100-140 at 42 (100th Congress, 1st Session). Similarly, the Committee's investigation revealed a significant degree of tension, distrust, and dislike between some officials of OIA and OI.

Blaha testified that he heard Connelly say about Fortuna, after listening to his voice on an Ellison tape recording: "that's Roger, you know, a wheeler-dealer type thing." [110] Blaha was generally aware of a tension between Connelly and Fortuna prior to the beginning of the investigation, and he stated, "I do know that Sharon Connelly was concerned about the appearance that it be some sort of retribution on her part." [111] Connelly, on the other hand, maintained during her testimony that she doesn't recall having had any concerns about the appearance of impropriety.[112] Blaha did not know why Connelly hadn't recused herself entirely to avoid any appearance of improper motive on her part for investigating Fortuna.[113]

One former OIA investigator, Maureen Gawler, who did not leave under circumstances which would prejudice her testimony and whom the Committee found highly credible, told the Committee that numerous OIA investigations of OI employees or supervisors were: "(1) arbitrarily opened; (2) pursued with tremendous personal vengeance; and (3) very seldom had a basis in law or fact." [114] Ms. Gawler claimed OIA Director Sharon Connelly's "disdain" for certain OI supervisors, including Fortuna was "legendary." [115] In her deposition Sharon Connelly denied she had such feelings about Fortuna. However, the OIA Deputy Director agreed that "Sharon Connelly is not very fond of some of the people in

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[107] Ibid.
[108] Ibid.
[109] Ibid.
[110] Blaha deposition at 81.
[111] Ibid., at 81, 82.
[112] Connelly deposition at 141.
[113] Blaha deposition of James at 81,83.
[114] Interview with former OIA investigator by GAC staff.
[115] Ibid.

OI" and further that she "doesn't particularly care" for Roger Fortuna.[116] He concluded that Connelly "did not respect" Fortuna, and that Fortuna "openly expressed his disdain" for Connelly. The NRC general Counsel indicated his belief that a combination of Connelly and Stello investigating a senior OI investigator, such as Fortuna, was the "worst possible combination" and represented a "low common denominator of common sense and judgment." He indicated his belief that the investigation appeared "vindictive" and was carrying "unneeded excess baggage." [117]

11. Ellison's Two-Week Stay in Virginia Hotel Room

On August 31, Resner wired $500 to Ellison in Florida as an "advance to consultant for recorded tapes and future services." (This was one day before Connelly sent a September 1 memo to Stello justifying the Ellison consultant contract, which was also dated September 1.) [118] Ellison drove to the Washington, D.C., area, arriving on September 1 at the Embassy Suites-Tyson's Corner hotel where he remained for approximately two weeks.

According to Connelly, the hotel was selected by him to preserve secrecy about this investigation. According to Connelly, she and Resner arranged for annual leave for the two-week period, and kept their whereabouts confidential from the rest of the OIA staff as the result of their apparent fear that OI staff, and Roger Fortuna specifically, would find out about their investigation, and Ellison's identity in paticular.[119] Blaha testified that Connelly explained to him, "there were close ties between Roger Fortuna and many of her staff, and Roger Fortuna at one time had worked in that organization [OIA], and she was concerned that if staff knew that this was going to, this was being pursued, that information would be leaked to Roger Fortuna." [120] Blaha indicated there was also concern that if Ellison's name were known, Fortuna would link Ellison and Comley and then attempt to reach Comley. If this happened, it was believed that Comley might destroy whatever tapes existed of his conversations with Fortuna. Connelly even went so far as to give Ellison the code name of "Thompson" during this period.

Two rooms were reserved at the Embassy Suites-Tyson's Corner hotel for use between September 1 and September 16—one room was occupied by Ellison; the other was used during work hours by Connelly, Resner, and Blaha for the investigation. According to Connelly, "what we did during that two-week period was to listen to Mr. Ellison's tapes. We had transcripts made of those tapes. We had Mr. Ellison review the transcripts against the tapes and make any corrections. We asked Mr. Ellison to explain the context of the conversations in the tapes, and as he was doing so, we were identifying issues. At the end of the two-week period, I did put Mr. Ellison on the record again as a matter of expediency to document the things that he had told me." [121]

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[116] Herr deposition at 85.
[117] Interview of Parler by the GAC staff.
[118] NRC document 186-145 provided to the GAC.
[119] Connelly deposition at 18. Blaha deposition at 79.
[120] Blaha deposition at 80.
[121] Connelly deposition at 114.

The transcripts of conversations Ellison had previously taped contained statements by Ellison that undermined his credibility. For example, one transcript showed the following exchange between Ellison and Comley over the issue of Ellison taping telephone conversations without notice to the other party. Comley: "You've got to be truthful with me". Ellison: "Stephen, Stephen, I don't even tape conversations anymore." [122] Obviously, because the transcript was made of recordings Ellison provided the NRC, he was recording the phone call where he claimed he was no longer taping calls.

Also during this two-week period, Connelly and Resner called in an FBI agent "to listen to some of the tapes." Resner testified that "the Washington field office was contacted because of the evidence that we had, it wasn't clear and it still isn't why Mr. Fortuna was dealing with this individual and discussing cases . . . it wasn't clear what was going on there, and it entered our mind why would Mr. Fortuna be doing this? And the issue of bribery comes up there, is he getting paid to do this? And so that's why we went to the FBI, because they have exclusive jurisdiction with respect to bribery." [123]

Resner conceded, however, that there was no evidence that Fortuna was accepting money for any reason from anyone.[124] Indeed, Sharon Connelly's notes from the August 29 interview of Ellison in Florida (witnessed by Resner) show that Ellison stated that he "doesn't believe [Fortuna] is taking money[;] doesn't believe [Comley] has offered money". Notes from that same interview show that Ellison "[d]oes not believe Roger is getting anything for it." [125]

According to Resner, the FBI agent said that "he doesn't see a criminal violation with respect to the telephone conversations" with regard to Fortuna.[126] Blaha testified that Connelly went to the FBI to determine if that agency would be interested in obtaining the alleged tapes of other conversations between Comley and Fortuna.[127] The FBI found no basis upon which to open their own investigation of Fortuna.[128] The FBI was interested in assessing whether Comley, Ellison or others had violated state or Federal wiretap statutes.[129]

12. September 12 Sworn, Interview of Ellison

On September 12, Ellison was interviewed under oath by Connelly and Resner. (Although Blaha was present during this interview, his presence is not noted on the Official Transcript of Proceedings.) The interview was tape recorded. In response to questioning about the time lapse between Ellison's arrival at the Embassy Suites and the date of the interview, Resner testified that "in order to do the interview, we had to review what he had and get prepared to do it." [130]

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[122] NRC prepared transcript of Connelly-Ellison tape; NRC document 278-8.

[123] Resner deposition at 68.

[124] Ibid.

[125] Connelly notes, NRC document 35-8.

[126] Resner deposition at 74, 68.

[127] Connelly deposition at 69.

[128] Resner deposition at 74.

[129] Connelly deposition at 69.

The transcript of the interview reveals several "pauses" which indicate that the recording device was stopped and restarted. Resner explained the pauses by saying that "sometimes he [Ellison] would get off on an opinion and we would say, stick to the facts." [131] Blaha said that Connely and Resner used the pauses to prepare Ellison for the next round of questioning. For example:

> Ms. CONNELLY. Do you know how Mr. Comley met Mr. Fortuna?
>
> Mr. ELLISON. I do not. (Pause.)
>
> Mr. ELLISON. Could you repeat the question, please?
>
> Ms. CONNELY. How did Mr. Comley meet Mr. Fortuna?
>
> Mr. ELLISON. That's a long story, as relayed to me by Mr. Comley. [Mr. Ellison's recitation of story then goes on for over one page of transcript.] [132]

Resner also testified that Ellison's sworn interview focused on the allegations raised by Ellison against Fortuna. The transcript confirms that the interview focused almost exclusively on Ellison's allegations that Fortuna had provided information about sensitive investigations to people outside the agency.[133] Specifically, Connelly questioned Ellison about references in a taped January 14, 1987, telephone conversation between Fortuna and Comley to the "Padovano" and "Wopler" cases.

Ellison alleged that Fortuna had not acted on those cases, as well as Ellison's own 1986 allegations involving wrongdoing at Nine Mile Point because Fortuna and Comley "are gathering as much as they can to put together the biggest package to prove that the [NRC] isn't regulating but promoting the industry. . . ." [134] Ellison also stated that Fortuna had been providing the Christic Institute with information for many years.[135]

During the September 12, 1988, interview, Ellison swore that the tape of the January 14, 1987, conversation between Fortuna and Comley was originally taped by Comley on Comley's machine and subsequently copied onto Ellison's machine.[136] (The transcript of this tape shows that there was a break in the Fortuna/Comley telephone conversation which had been initiated by Comley. After the initial telephone conversation was completed Comley called Fortuna back.) Ellison claimed he did not hear the first telephone conversation, but he listened in and himself taped the second one on a telephone extension in the bathroom of the hotel room.[137] However, when questioned by Connelly, Ellison admitted that he knew during the first conversation that Fortuna mentioned that Ellison was "up on a sex charge, a criminal arrest," which remark caused Ellison to ask Comley to call Fortuna right back and get from Fortuna the information he had received on Ellison's arrest.[138] Ellison was not asked by Connelly to explain how he knew what was said in the first Comley/Fortuna conversation if he was not listening in at the time.

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[130] Resner deposition at 95.

[131] Ibid., at 127.

[132] Interview with Douglas Ellison by OIA, September 12, 1988 at 10, 11.

[133] Taped interview of Ellison by NRC, September 12, 1989, at 3, and throughout document.

[134] Ibid., at 59, and throughout document.

[135] Ibid., at 35, and throughout document; telephone interview of Ellison by GAC staff.

[136] Ibid., at 4, and throughout document.

[137] Ibid., at 4, and throughout document.

During this taped interview Ellison represented that Comley possesed 40–50 taped conversation of Fortuna (down from the figures he had previously provided OIA).[139]

With regard to his guilty plea, Ellison denied that he ever engaged in any sexual misconduct with his babysitter, and he insisted that Niagara Mohawk had set him up on this charge because he had gone to the NRC and other authorities in 1986 with complaints about the utility.[140]

Ellison also stated that he had previously provided a copy of the January 14, 1987 taped Fortuna/Comley conversation to a producer for the television show "60 Minutes," an investigator for the New York State Department of Law, and an FBI agent who was a personal friend of his. Ellison also said that he had played the tape for reporters with the Wall Street Journal and ABC News, and for someone at Niagara Mohawk.[141]

13. EDO's Response to Ellison's Information

Other NRC personnel, including the trained Nuclear Engineer on OIA's staff, could have collected and assessed the safety significance of Ellison's information. Indeed, Blaha stated that on two or three occasions during the two-week period he needed to and did consult with Stello about the safety-related allegations raised by Ellison, as well as information developed during the investigation related to Fortuna.[142] Blaha believes he was present in the hotel room 80–90% of the time Ellison was there. Blaha researched several of the "technical" allegations raised by Ellison and prepared his analysis in report form which was left with other OIA investigatory materials. This document shows that Blaha noted the following issues:

1. Ellison alleges criminal misconduct on the part of a former Commissioner and/or a member of his staff in that they breached Ellison's request for confidentiality and provided his name and allegations to the utility;
2. Did Region I and OI give adequate and timely feedback to the alleger?
3. Did Region I adequately followup on allegations made by Ellison? Ellison asserts they did not and the NRC covered up utility wrongdoing.
4. Ellison alleges that the Nine Mile Point Unit I HPCI pumps switches are not adequately calibrated for cold start, therefore, the pumps cannot be relied upon to start during an emergency.
5. Ellison alleges that on or about April 27, 1986 there was a fire in the dry well at Nine Mile Point Unit I, which was not reported to NRC.

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[138] Ibid., at 18, and throughout document.
[139] Ibid., at 6, and throughout document.
[140] Ibid., at 18–32, and throughout document.
[141] Ibid., at 60, and throughout document.
[142] Blaha deposition at 23.

6. Ellison alleges that monthly operating reports sent to NRC for Nine Mile Point Unit 1 have been falsified for the period January to July, 1986, in that they did not report maintenance which took place on LPRM connectors.

7. Ellison alleges that drug abuse, particularly use of marijuana, was commonplace in the Instrumentation and Control Section of Nine Mile Point during the period October 1984 to July 1986. He substantiates this with specific first hand observations and audio recordings and general information. He also alleges that the utility drug testing program was not carried out.[143]

Blaha testified that in the end, he was able to determine that in almost all of the instances, Ellison's allegations had been addressed by Region I, and they had taken what they considered to be appropriate action.[144] In other instances, such as the allegation that anyone could dial in and get access to the reactor computer, Blaha was able to determine that it was not "new" at all or, after consulting Stello, that it did not have immediate health and safety significance.[145]

Stello asserts that during the course of Blaha's interviews with Ellison—from September 1 through September 16—"the projected startup date for the plant had slipped [and] there was no immediate need to address these issues." [146] Therefore, Blaha wrote up the safety issues so they would be pursued by the NRC sometime before startup.

With regard to the allegations of drug use and record falsification by Niagara Mohawk employees, Stello did not refer those allegations to the Director of the NRC's Office of Investigations (OI), which is responsible for investigating alleged criminal wrongdoing on the part of the NRC's licensees.

14. U.S. Attorney's Refusal to Prosecute Fortuna

On September 21, Connelly and Resner visited the U.S. Attorney's Office in Baltimore. They met with Joyce McKee, Assistant U.S. Attorney, and presented the information obtained from Ellison regarding Fortuna. According to Connelly, "I wanted to go to the U.S. Attorney's office to determine whether there was any potential criminal violation that they could see that would have an effect on the rights that we would ultimately give to Mr. Fortuna when we interviewed him on this issue. It might determine the way we proceed in gathering evidence and so forth. The U.S. Attorney's office might decide to take the case over and bring somebody else in to investigate it. I wasn't sure what I had. I was seeking advice." [147] Based on the evidence presented, consisting of tape recordings obtained from, and statements made by Ellison, Ms. McKee declined prosecution of Roger Fortuna at the meeting.

The Assistant U.S. Attorney confirmed her decision to decline prosecution in a September 23, 1988, letter to Connelly and Resner. The letter states, in relevant part, the following:

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[143] NRC document 186, *et seq.*

[144] Blaha deposition at 70.

[145] Ibid., at 163.

[146] Stello letter to GAC, April 14, 1989.

[147] Connelly deposition at 125.

The tape recordings do not disclose that Mr. Fortuna participated in the commission of any criminal offense, including obstruction of Nuclear Regulatory Commission proceedings, making false statements to the Nuclear Regulatory Commission, or obstruction of communication of information regarding possible criminal violations. The January 14, 1987, tape of a conversation between Mr. Comley and Mr. Fortuna is incomplete, which creates an evidentiary problem.

You stated that in your own earlier contact with Mr. Comley, you had dismissed him as "a flake." Mr. Comley obviously has an interest in exaggerating the nature and extent of his relationship with Mr. Fortuna. For these reasons, I do not think any characterization by Mr. Comley of his relationship with Mr. Fortuna made in telephone conversations taped by Mr. Ellison would be reliable.

Besides the fact that the tape recordings do not show any criminal activity on the part of Mr. Fortuna, Mr. Ellison appears to be a very slender reed on which to rest a criminal case. He has a conviction for a sexual offense, a work history involving an extensive absence for mental health reasons and a long period of subsequent unemployment. His practice of tape recording private telephone conversations may have violated state laws depending upon his location at the time of the recordation. Moreover, you have paid him $5,000 and have stated that he claims to have worked for the Federal Bureau of Investigation as an informant in the past. As a witness, his credibility could be impeached by some or all of these facts.

15. OIA's Decision Not to Contact Comley

At no time while Sharon Connelly was in charge of investigating Ellison's allegations did she initiate any efforts to contact Comley for an interview or subpoena him or his materials.[148] According to Blaha, she did question the FBI about whether that agency could obtain materials allegedly in Comley's possession.

Through his attorney, the Committee obtained a sworn statement from Comley, who claimed he called Fortuna from his hotel room the evening before he met with the Department of Justice regarding a case involving a Justice Department prosecution of alleged nuclear safety problems. Comley acknowledges that Ellison was present in the hotel room with his permission. According to Comley, during that call, Ellison went into the hotel bathroom, where there was another telephone extension, and *without* Comley's permission, picked up that telephone to listen to and record the conversation. According to Comley, at the time of this conversation, he was not aware that Ellison was taping it. It was only after he got off the telephone that he saw Ellison with his tape recorder. Comley asked Ellison to give him the tape, but Ellison refused. Comley denies that Fortuna has ever discussed confidential information with him about investigations being conducted by OI. Rather, Comley claims he initiated contacts with Fortuna in order to provide Fortuna with information that OI could investigate, and to keep Fortuna advised of Comley's initiatives concerning nuclear power issues, such as going to the Department of Justice to encourage the Department to reopen the case he felt was inappropriately closed.[149]

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[148] Ibid., at 181-184.

16. OIA's November, 1988 Interview with Fortuna and Other Investigative Activities

On November 4, 1988, OIA's Herr and Resner conducted an interview of Fortuna. They took notes but did not stenographically record it. According to Herr and Resner, the purpose of the interview was to collect general information on how OI had handled Ellison's 1986 allegations regarding Nine Mile Point.[150] Fortuna was asked no questions concerning any communications with Comley. He was not questioned about the Padovano or Wopler cases. He was not advised that OIA had Ellison's tapes, even after Fortuna said that he believed Ellison had previously tape recorded him.[151]

According to the Report of Interview and their notes, when Fortuna specifically asked if he was the target of their investigation, Resner and Herr responded that "it was not a criminal investigation of him." [152] Fortuna then asked if "he was the subject of any administrative actions" by the NRC as a result of this investigation. Resner and Herr explained to Fortuna that at that point in time, OIA was attempting to learn more about the OI's involvement in Ellison's allegations and that their interview of Fortuna was part of an OIA effort to obtain an overview of OI's role in the matter." [153] This evasive response conflicts with a policy for OIA that Sharon Connelly spelled out in a speech to NRC employees in Region IV on May 9, 1988. At that time, Connelly was asked by a Region IV employee if OIA advised an individual he was a target or subject of an investigation. Connelly responded that if OIA knew the individual was a target, he would be so informed.[154]

Also in November 1988, Herr and Resner traveled to Region I's office in King of Prussia, Pennsylvania to interview NRC employees. There too, these employees were asked no questions concerning Comley, the Christic Institute, Padovano or Wopler cases, or Ellison's tape recordings.

17. Ellison's Activities Following his Return to Florida

By December 1988, Ellison was convinced that his briefings with the NRC were only for the purpose of discovering all the information he had, with no intention on the NRC's part to do any further investigation. Ellison informed the FBI that on December 16, 1988, he contacted OIA's Mark Resner and said that he was going to a producer with the television show "60 Minutes" to tell all, since it appeared that nothing was being done by the NRC.[155] On December 21, 1988, Ellison was interviewed by an FBI Agent in New York City in the presence of an Assistant United States Attorney, Southern District of New York. This interview was requested by Ellison. Ellison admitted to the FBI that during his August 1988 interview with Connelly and Blaha, he "suggested at that time that he wanted a settlement from NRC for all the pain and suffering that he had incurred from the harassment he had received as a result of his 'whistleblowing'." [156] He also admitted that he was advised that no such settlement would be available but that the NRC could pay him as a consultant.

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[149] Comley's sworn affidavit to the Committee.
[150] Report of Interview of Roger Fortuna (Dec. 14, 1988). NRC document 298-1.
[151] NRC document 298-1 at 3.
[152] NRC document 298-1.
[153] Ibid.
[154] Video tape of meeting provided to the GAC by the NRC.
[155] FBI interview notes with Ellison; See Resner deposition at 124.

18. Activities in January and February 1989

On January 26, OIA sent a memo to Fortuna (signed by Deputy EDO Hugh L. Thompson Jr.) stating its intention to reinterview him "on the record" concerning allegations made by Ellison. The letter/memo informed him that he was the subject of an investigation which was administrative, not criminal, in nature. The agency advised that Fortuna had no right to counsel in the course of the investigation, but the agency would grant his request to have an attorney present during the interview. Upon the advice of counsel, Fortuna sought to learn the agency's authority for insisting on an "on the record" interview without a participatory role for counsel.

On February 9, 1989 (the same day Resner converted the case from a preliminary "Inquiry" to a full-blown "Investigation"), Deputy EDO Hugh L. Thompson, Jr. directed Fortuna to attend an OIA investigatory interview on the record, under oath, with a court reporter present. Thompson instructed Fortuna that failure to comply would result in disciplinary action which may include removal.

On February 15, Fortuna appeared for the interview but refused to answer questions on the advice of counsel. After bringing a lawsuit in Federal District Court for a temporary restraining order, which was eventually denied, Fortuna did appear for a sworn interview with a court reporter.

19. NRC's Destruction of Relevant Documents

On February 23, 1989, Senator Glenn wrote Chairman Zech stating his intention to conduct a review of allegations concerning OIA investigations of OI by reviewing agency documents and interviewing witness. On February 28, two agency employees (Blaha and Halman) each destroyed documents related to the Ellison consultant contract.[157] It was not until March 1 that the agnecy first issued a notice to all employees to preserve and retrieve all documents subject to Congressional requests.[158]

In defense of this delay, the agency asserted that from February 23 through March 1, 1989, the Commission was asking that requests for agency documents from Capitol Hill be deferred until OIA's internal investigation of the Fortuna case was completed, and "[w]hen it became clear that our requests would not be accepted, the March 1, 1989, memorandum was issued to begin the process of gathering the documents in question." [159]

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[156] Ibid.; See Blaha deposition at 60-61.

[157] Blaha deposition at 9-15.

[158] NRC letter to the GAC (April 14, 1989).

On April 10, 1989, Wiliam Parler, NRC's General Counsel, voiced his opinion that "[a]s a general proposition, official agency documents should not be destroyed by individuals. They should be handled in accord with applicable procedure for the disposition of agency records." [160]

20. Personnel Actions

In December, 1988, Sharon Connelly recommended Mark Resner for a $3,500 cash award, which he received in March 1989 "in recognition of special achievement which resulted in a significant contribution to the work of the Commission." [161]

In March 1989, Sharon Connelly asked for reassignment from her position as Director, OIA to another position in the agency. The Commission accommodated this request, and she was reassigned to the Office of the Comptroller.

21. The Cost of Ellison's Information and Services

The total cost to the taxpayer for Mr. Ellison's information and services as a consultant was $11,491.33. This included the following costs:

(1) $1,872.00 for lodging, meals and miscellaneous to Ellison ($117 day × 16 days);

(2) $4,240.00 for compensation paid to Ellison ($40 an hour × 106 hours);

(3) $379.72 for transportation to Ellison (.22 a mile × 172 miles);

(4) $1,451.37 for cost of hotel suite;

(5) $179.49 for supplies and reproduction services; and

(6) $3,368.75 for transcription costs of cassettes and taped material.[162]

III. CONCLUSION

1. Questionable Conduct of Investigation

A. The NRC's Failure to Subpoena Evidence and Testimony.

At the inception of OIA's investigation of the allegations made by Douglas Ellison, a decision was made not to subpoena the tapes of certain telephone conversations in the possession of Douglas Ellison. Ellison, who was desperate for money, refused to turn over the tapes unless he was paid money by the NRC. Officials at NRC decided not to subpoena Ellison, and instead to pay him as a NRC consultant. That decision is incomprehensible given that the NRC has broad subpoena power. That power is designed to deal with recalcitrant witnesses such as Ellison and should have been used in this case.

OIA Director Connelly, who took personal charge of this entire investigation, claimed Ellison's willing cooperation was necessary to the success of the investigation, and that the subpoena process was unworkable because it might have alerted Fortuna and Comley to the investigation. However, target/subjects of investigations such as Fortuna, and persons allegedly in possession of physical evidence such as Comley would have to ultimately be contacted in any case, in order to seek evidence or testimony.

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[159] Ibid.

[160] NRC document supplied to GAC.

[161] NRC letter to GAC; Attachment to April 14, 1989 submission.

[162] Connelly deposition at 184; NRC letter to GAC, April 14, 1989.

Ellison's credibility and truthfulness were of paramount importance in the allegations against NRC employee Fortuna, inasmuch as Ellison was *not* a party to the only crucial taped telephone conversations which OIA relied on to place Fortuna under investigation. There are Federal and State laws which prohibit persons from Wiretapping and electronic bugging. The Committee and the NRC have received sworn affidavits from Comley, the other party to the Fortuna phone call. Comley claims Ellison taped the calls without comley's or Fortuna's permission and out of Comley's sight. Ellison claims he made the tape with Comley's permission. While the Committee does not necessarily credit Comley over Ellison, if Comley's account is true, Ellison's actions may have constituted a felony violation of the Federal wiretap law, 18 U.S.C. 2511 *et. seq.*, and related state wiretap statutes. Indeed, if Comley is correct, the evidence the NRC paid taxpayer dollars to obtain could be judicially suppressed, and in all likelihood would not be available in any judicial or administrative proceeding. Since Ellison is a witness whose criminal history diminished his credibility, payment only further impugned his motives and therefore the investigation.

When OIA sought to have Fortuna investigated and potentially prosecuted by the Department of Justice on the basis of the information of Ellison tapes, the origin of the tapes and Ellison's credibility were assessed by the United States Attorney's office in Baltimore, Maryland. Even without access to Comley's allegations as to the origin of the tapes, the Assistant U.S. Attorney reviewing the matter concluded:

> Besides the fact that the tape recordings do not show any criminal activity on the part of Mr. Fortuna, Mr. Ellison appears to be a very slender reed on which to rest a criminal case. He has a conviction for sexual offense, a work history involving an extensive absence for mental health reasons and a long period of subsequent unemployment. His practice of tape recording private telephone conversations may have violated state laws depending upon his location at the time of the recordation. Moreover, you have paid him $5,000 and have stated that he claims to have worked for the Federal Bureau of Investigation as an informant in the past. As a witness, his credibility could be impeached by some or all of these facts.

The U.S. Attorney's Office then declined to prosecute Fortuna.

Making Ellison a paid "consultant" in order to obtain his evidence and cooperation led to a waste of taxpayers' funds. An agency like the NRC should not pay for evidence it can easily subpoena, especially as in this case the payment itself undermines the value of the evidence sought.

B. OIA's Failure to Conclude the Investigation in a Timely Manner.

Despite obtaining the Ellison tapes in September, OIA proceeded at a snail's pace to conclude its investigation. Since the heart of OIA's case, if any, revolved around the recordation of the Fortuna-Comley conversations, it is inexplicable why OIA took no action between September 1988, and January 1989, to confront directly Comley and/or Fortuna. If the materials against Fortuna were damning (which they do not appear to be from our review or the U.S. Attorney's Office review) OIA should have brought this matter to a conclusion expeditiously, before memories were allowed to fade.

2. The Conduct of the Investigation Gives the Appearance of Having Been Driven By Personal and Professional Animosities

In 1987 this Committee held a hearing concerning the NRC which disclosed a level of personal animosity among senior NRC managers. For example, the head of OI testified that Victor Stello, Jr., the NRC's top staff member, shook his fist at the OI director in a threatening manner accompanied by threatening words. *See* S. Hrg. 100-140 at 42 (100th Congress, 1st Session). Similarly, the Committee's investigation revealed a significant degree of tension, distrust, and dislike between some officials of OIA and OI.

This background of personal conflict gives the appearance that decisions, such as OIA's placing an informant on the NRC payroll for the first time ever, may have been motivated by reasons other than sound managerial or investigative judgment. The OIA personnel, particularly Connelly, and Stello all have denied, explicitly or implicitly, that such motivations played any part in the decisions as to how to proceed. But, the fact remains that OIA Director Connelly took personal charge of this investigation; personally flew to Florida to meet Ellison; in a subterfuge, ostensibly took two weeks of "vacation" during which Ms. Connelly and others were meeting with Ellison in a Virginia hotel room; and championed the decision to give Ellison a "consultant's" contract.

3. OIA's Unfair Investigative Practices

The Committee also finds that the investigative practices in this case raise serious questions as to whether the investigation met expected standards of decent and fair behavior and NRC policy. On November 4, 1988, OIA's Deputy Directors for Audit and Investigation met with and interrogated Roger Fortuna, the NRC's "target" or "subject" of this extraordinary investigation. Fortuna, who voluntarily answered all questions during this interview, specifically asked whether he was the "target/subject" of the OIA investigation. The answers given to this fundamental question were deliberately vague and inaccurate. Had Fortuna been told of his real status as the "target/subject" he might have chosen to respond differently. Once Fortuna realized he was the target, months later, he did in fact engage counsel. We do not believe the explanations provided by the OIA participants, who sought to characterize the purpose of this interview as merely to gather background information from Fortuna, not to interrogate him about his knowledge with respect to Ellison, can be taken seriously. In the OIA memoranda of interview, Ellison's name appeared as many as 38 times during the interview. We believe the NRC should seriously consider the propriety of the conduct of all the OIA supervisors who participated in this interview and in the strategy sessions leading up to the interview.

OIA's formal policy was to inform "target/subjects" of their status. We can see no reason why this policy should not have been followed in this case. We also note that OIA's Director Connelly had previously stated in a seminar for NRC employees that OIA reserved the right to lie to employees under investigation. It appears that this latter policy was followed in this case.

4. Improper NRC Management Involvement in the Investigation

It is a general principle of the inspector general community that mangement should *not* be involved in determining how and when to proceed with particular investigations.

In 1987, the Committee found such management interference and involvement in several OIA investigations (See S. Rep. 150, 100th Congress, 1st Session at 15); the case study concerning the involvement of Victor Stello, Jr. with respect to OIA's Comanche Peak investigation (Ibid., at 68–70); and the case study concerning the involvement of Victor Stello, Jr. with respect to OI and OIA investigations regarding TVA (Ibid., at 65–68).

In this case the Committee finds that NRC management again became duply involved in the conduct of the investigation. From the inception of the Ellison investigation, the Director of OIA involved the NRC's Executive Director for Operations (EDO), Victor Stello, Jr., in all facets of the investigation. Stello was the official who provided the "safety" rationale in order to escape the General Counsel's directive that the NRC staff did not have the authority to pay informants for internal investigations of alleged employee misconduct, if there was no public health and safety significance. We believe the allegations that Ellison provided concerning new safety related concerns was so limited that the case could equally be made that this safety rationale merely provided a convenient cover to do something the NRC General Counsel had otherwise indicated could not be done—putting someone on the payroll to provide information pertaining to an internal affairs investigation.

The General Counsel of the NRC gave written guidance indicating that as a general matter, the NRC had no authority to pay for evidence of informants, although he indicated the NRC could conceivably pay to obtain information necessary to carry out the NRC's safety mission. At the time this written opinion was given, the General Counsel was not told about Ellison's potential credibility problems; nor was he told that OIA already had previewed the information and had focused on Fortuna's activities, which were not safety issues. The NRC's General Counsel indicated that had he been told either of these facts, he would have actively opposed the NRC's putting Ellison on the consultant payroll. Subsequently, Stello remained involved in the investigation on a day-to-day basis. He assigned his assistant, James Blaha to participate in the investigation on a day-to-day basis, including during the two week period when Ellison was secreted in a Virginia hotel room at government expense. Blaha paid Ellison (in cash) and had other duties.

In addition, from September 1988, through January, 1989, Sharon Connelly repeatedly briefed members of the Commission concerning the allegations against Fortuna, and the progress, or lack thereof, in the course of the investigation. On the other hand, since the case against Fortuna, if any, was not in any sense complete, briefings of the Commission did not serve any real purpose, unless they were to obtain the Commission's approval for the extraordinary course of NRC conduct. In this case, punctuated as it was by a history of animosity between OIA and OI offices, where the investigation was conducted in such extraordinary manner, these commission-level briefings served to make the Commission more responsible for the conduct of the investigation itself. Though the Commission was not questioned by the Committee staff, it is clear that their failure to take action to stop Mrs. Connelly and others, once briefed, suggests that the Commissioners approved, however tacitly.

CONCLUSION

The Committee has undertaken a review of investigations of internal affairs at the NRC in 1987 and 1989. At both times OIA investigations were incompetently conducted, punctuated by management intervention and other problems. These problems appear to be deeply rooted and systematic. Congressional action should never have been required to obtain an independent review of the Fortuna investigation. The failure of the Commission to take actions designed to prevent the problems exposed in 1987 from being repeated is highlighted by these facts.

The passage of the 1988 Inspector General Act Amendments creating a Presidentially-nominated inspector general for the NRC, [Public Law 504 (100th Cong. 1988)] will remedy some of the problems revealed by this investigation. However, the problems with regard to the conduct of NRC internal investigations and management's overinvolvement in such investigations at the NRC appear to represent a cultural problem, which a single appointment is not likely to overcome.

These events also demonstrate that the Office of Investigations should be further protected, either by placing it within the Inspector General's Office or by some separate statute which will serve a similar purpose.

This investigation also raises new questions about the looseness and lack of criteria governing the letting of consulting contracts by the NRC, a subject of significant concern to this Committee.

The NRC should take decisive action to assure that future investigations are properly conducted.

The Committee has not taken any formal position concerning the allegations made against Mr. Fortuna since the NRC has not completed its internal process of evaluation of those allegations. The Committee will actively review the NRC's actions once these are completed.

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 17, 1989

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

We are writing to request your personal and immediate attention to five (5) Presidential appointments needed to prevent fraud, waste and abuse. As the Chairman and Ranking Minority Member of the Governmental Affairs Committee, we are hoping that you will be able to expedite these vital appointments.

On October 18, 1988, President Reagan signed Public Law 100-504, which created five new Presidentially-appointed inspector general (I.G.) positions. The Department of Justice, the Department of the Treasury, the Nuclear Regulatory Commission (NRC), the Federal Emergency Management Agency (FEMA), and the Office of Personnel Management (OPM) are scheduled to complete their transition under the Inspector General Act by April 17, 1989.

Unfortunately, Committee staff conversations with the White House personnel office have led us to understand that none of these Inspector General nominations are expected to be made in the near future. As a general matter of concern, we believe the internal audit and investigation function at all five of these agencies are crucial. Without the leadership of a Presidentially-appointed I.G., a number of serious problems could result. First, in many agencies "interim" I.G.'s will be appointed if Presidential appointments are not made. These interim appointments will not be in a position to provide the type of decisive leadership an appointee who has your approval and who has undergone Senate confirmation would have. Second, persons with these interim appointments may enter into written or oral memoranda of understanding as to long-term policy on issues affecting the new I.G. office. Such arrangements then have a tendency to perpetuate themselves and become permanent policy, even if the permanent Inspector General might not have entered into such an agreement.

Finally, at several of these agencies, serious problems with regard to the internal audit and investigation functions have come to our attention since the legislation was passed. For example, we are deeply concerned about the NRC's discharge of its internal investigation function. We recognize that this agency is not under your day-to-day control. Regarding an NRC investigation currently under the Committee's review, we question the judgment and competence of those in charge of the investigation and the manner of management involvement in its conduct. In this case, thousands of dollars in federal funds were expended to hire a government "consultant" with a criminal record and other indicia of minimal credibility. In April of 1987, the Committee held hearings which demonstrated serious problems with internal investigations at the NRC. While we do not expect these problems to be instantly solved by the nomination of an Inspector General, we believe that the nomination is a necessary first step in fixing these problems.

For all of the foregoing reasons, and knowing that your new Administration is making many important personnel decisions, we hope you will give these appointments your personal consideration.

Sincerely,

John Glenn
John Glenn
Chairman

Bill
William V. Roth, Jr.
Ranking Minority Member

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United States Senate
COMMITTEE ON
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WASHINGTON, DC 20510-6250

February 23, 1989

Mr. Lando Zech, Chairman
United States
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Zech:

I am deeply concerned about recent allegations concerning investigations of the Office of Investigations (OI) conducted by the Office of Inspector and Auditor (OIA). I have authorized committee staff to conduct an expeditious review of these matters to ensure that: (1) OI's function is not being impeded and that its reporting relationship to the Commission remain unfettered; and (2) that fundamental constitutional and statutory rights of employees are not violated.

Pursuant to this review, it will be necessary for staff to take sworn statements from a number of agency employees, including but not limited to Sharon Connelly, Fred Herr, Mark Resner, and Hugh Thompson, and to obtain agency documents.

I will appreciate the NRC's prompt cooperation. I have assigned Stephen Ryan and Lorraine Lewis (224-4751) to this matter.

Sincerely,

John Glenn

John Glenn
Chairman

JHG:smr

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FREDERICK R. WESTPHAL

March 1, 1989

Committee on Governmental Affairs
Dirksen Building
Washington, DC 20510

ATTN: Mr. Steve Ryan

Dear Mr. Ryan:

Pursuant to our telephone conversations please find enclosed an Affidavit from which supported the original criminal charge against Douglas Ellison of Sexual Abuse in the Second Degree, a Class A misdemeanor. Subsequent to his arrest, the Defendant pled guilty to attempted sexual abuse in the third degree, a violation, in June, 1987. This was done in consideration of the facts that the Defendant had moved from the jurisdiction, had lost his job and the victim was reluctant to testify, a reluctance shared by her parents since the trial would have taken place in the rural community in upstate New York and could have subjected the victim to further trauma from the necessity of testifying in open Court.

Also enclosed are redacted Affidavits from two other individuals who were allegedly sexually abused by Douglas Ellison. Since the incidents referred to took place prior to November 1, 1984, charges were not filed. Prior to that date, it would have been necessary to submit evidence corroborating the facts alleged in the Affidavits by someone over the age of 16 years, evidence that was not available. This unenlightened requirement of the Penal Law was removed by the New York State Legislature and but for the corroboration requirement which was lacking, felony charges of sexual abuse would have been placed against Mr. Ellison. I would hope that you and the Committee considering matters concerning Mr. Ellison's paid for testimony would respect the privacy of the individuals concerned and try to avoid the necessity of their being victimized again through making these Affidavits public.

Through the course of the proceedings in this case, the defense attorney repeatedly claimed that our

> "office was being used by Niagara Mohawk and its agents in this matter. You could probably learn something of that by making some discrete calls to the FBI. You could do the same by contacting anyone you know with the Nuclear Regulatory Commission and the New York State Attorney General's office. They are all involved in Ellison's plight with that utility.
>
> Dennis, I kid you not. This case was actively pursued by the utility from its inception. If you dug far enough with the reported victim and her family, you would realize this."

Mr. Steve Ryan
Page Two
March 1, 1989

To my knowledge, none of the victim's family were employed in any way, shape, or form by the utility, Niagara Mohawk. Our office had absolutely no reason whatsoever to disbelieve the allegations made in the complaints provided herewith. Certainly, the credibility of Douglas Ellison could be questioned in light of the provided materials.

If I am able to provide anything further without violating any ethical standards, I would be most pleased to do so.

Very truly yours,

Paul A Carbonaro

PAUL A. CARBONARO
Cayuga County District Attorney

PAC:dmd
Enclosures

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United States Attorney
District of Maryland

United States Courthouse, Eighth Floor
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✓ Dir
✓ DDir
AD/AA
AD/TA
✓ AD/I
✓ Asst

File

September 23, 1988

Sharon Connally, Director
Mark Resner, Deputy Director
Office of Inspector and Auditor
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Ms. Connally and Mr. Resner:

This letter will confirm the outcome of our meeting of September 21, 1988, in which I declined prosecution of Roger A. Fortuna, Deputy Director of the Office of Investigations, Nuclear Regulatory Commission.

That declination was based upon the evidence which you presented which consisted of tape recordings obtained from, and statements made by, an informant named Douglas Ellison.

The tape recordings do not disclose that Mr. Fortuna participated in the commission of any criminal offense, including obstruction of Nuclear Regulatory Commission proceedings, making false statements to the Nuclear Regulatory Commission, or obstruction of communication of information regarding possible criminal violations. The January 14, 1987, tape of a conversation between Stephen Comley, founder of "We the People," and Mr. Fortuna is incomplete, which creates an evidentiary problem. The tape which does exist appears to show that Mr. Comley has been providing information or allegations to Mr. Fortuna. The discussion which centers around a meeting at the Justice Department indicates that Mr. Comley wants to complain about the disposition of a particular case but is reassuring Mr. Fortuna that he does not want to put him in a bad light. This call does not reveal a violation of criminal law. In the second conversation of January 14, 1987, Mr. Fortuna gives advice to Mr. Comley regarding Mr. Comley's relationship with Mr. Ellison. Mr. Fortuna is certainly free to offer advice wherever he chooses.

You stated that in your own earlier contact with Mr. Comley, you had dismissed him as "a flake." Mr. Comley obviously has an interest in exaggerating the nature and extent of his relationship with Mr. Fortuna. For these reasons, I do not think any characterization by Mr. Comley of his relationship with Mr. Fortuna made in telephone conversations taped by Mr. Ellison would be reliable. The other conversations in which Mr. Fortuna is taped actually show that Mr. Fortuna refused to disclose an Office of Investigations report to Mr. Ellison and instead directed Mr. Ellison to make a request under the Freedom of Information Act.

Besides the fact that the tape recordings do not show any criminal activity on the part of Mr. Fortuna, Mr. Ellison appears to be a very slender reed on which to rest a criminal case. He has a conviction for a sexual offense, a work history involving an extensive absence for mental health reasons and a long period of subsequent unemployment. His practice of tape recording private telephone conversations may have violated state laws depending upon his location at the time of the recordation. Moreover, you have paid him $5,000 and have stated that he claims to have worked for the Federal Bureau of Investigation as an informant in the past. As a witness, his credibility could be impeached by some or all of these facts.

For the reasons stated above, pursuit of a federal criminal case is unwarranted. As I stated at the time of our meeting, if you wish at any time to present additional facts or evidence, please do not hesitate to contact me.

Sincerely,

BRECKINRIDGE L. WILLCOX
United States Attorney

Joyce K. McKee
Joyce K. McKee
Assistant United States Attorney

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United States Senate
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WASHINGTON, DC 20510-6250

April 5, 1989

The Honorable Lando W. Zech, Jr.
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Zech:

As you know, I am reviewing the Nuclear Regulatory Commission's handling of an internal investigation involving allegations raised by Mr. Douglas Ellison in August 1988. According to an internal OIA document dated August 5, 1988, these included allegations against Roger Fortuna and others.

In order for me to complete this review, I would appreciate receiving responses to the following questions no later than close of business on April 14, 1989:

1. On February 23, 1989 I wrote you stating my intention to conduct a review of recent allegations concerning OIA investigations of OI, which included OIA's investigation of the Ellison allegations. On February 28, 1989, agency employees James Blaha and Edward Halman each discarded relevant file documents. On March 1, 1989, the agency first issued a notice to all employees to retrieve relevant files. Why did the agency wait until March 1st to issue such a notice, and what steps has the agency taken to ensure that no other relevant documents have been discarded, destroyed or altered?

2. Please describe the knowledge of each Commissioner concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did each Commissioner learn of all or a portion of the Ellison allegations?
Who informed each Commissioner concerning these allegations?
What did each Commissioner learn from Mrs. Connelly?
What did each Commissioner learn from General Counsel William Parler?

What did each Commissioner know about the allegations during the period August 5, 1988 through February 23, 1989? What did each Commissioner know about the agency's internal investigation of these allegations during that same period?

3. Please describe the knowledge of any staff representative of a Commissioner's office concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989.

4. What did each Commissioner know about Mr. Ellison's (a) background, (b) his history with Region I, OI and OIA, (c) allegations and/or convictions against him for sexual offense(s), and (d) his employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed each Commissioner concerning this information about Mr. Ellison? When was each Commissioner so informed?

5. Has the Commission as a body ever approved or disapproved the consulting arrangement the agency entered into with Mr. Ellison? If so, when was this action taken? Did any Commissioner individually approve of such an arrangement prior to its being entered into? Did any Commissioner individually approve of such an arrangement after it was entered into?

6. What was the total cost for Mr. Ellison's services under the consulting arrangement and for the analysis of the materials provided by Mr. Ellison? Please include a breakdown of the total (a) lodging, meals and miscellaneous expenses paid to Mr. Ellison (at $117/day), (b) compensation paid to Mr. Ellison (at $40/hour), (c) transportation, reproduction, or other expenses paid to Mr. Ellison (at actual cost), (d) the cost of the hotel suite where Mr. Ellison met with Mrs. Connelly, Mr. Resner and Mr. Blaha, (e) the equipment, supplies and any other costs for this hotel suite, (f) the transcription costs of the Ellison cassettes and any other taped materials, and (g) any other costs or expenses.

7. The agency established a fund to make the payments under the consulting arrangement with Mr. Ellison and any other payments related to the agency's investigation of his allegations (FIN: B8169, "Support for DEDROGR"). What does "DEDROGR" stand for? Please provide other documents which would show that prior to August 31, 1988, "Support for DEDROGR" was used in contexts other than the agency's internal investigation of Mr. Ellison's allegations against Roger Fortuna.

8. Was the fund established to make the payments under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR") ever audited by any component of the agency? If not, why not? If so, what was the result of such audit? Please provide documentary evidence concerning the status and result of any such audit.

9. Based on what the Commission now knows, does the Commission as a body today approve of the consulting arrangement the agency entered into with Mr. Ellison? If so, why? If not, why not?

10. From Commission's perspective, during August or September 1988, was there any legal or other impediment to the Commission's issuing a subpoena for the materials in Mr. Ellison's possession relating to his allegations? If so, please identify such impediment(s).

11. Was Mr. Steven Goldberg, a Nuclear Engineer on OIA's staff, or any other OIA employee trained in technical or safety issues, available to review the technical or safety aspects of Mr. Ellison's allegations between August 5, 1988 and September 18, 1989? If not, why not?

12. Does the Commission as a body today approve of Mr. Stello's and Mr. James Blaha's involvement in the agency's internal investigation of Mr. Ellison's allegations? If so, why? If not, why not?

13. Please provide any and all documents related to Mr. Mark Resner's receiving a $3,500 monetary award based upon the recommendation of Mrs. Sharon Connelly.

14. Did OIA or any other component of the agency enter into a confidentiality agreement with Mr. Ellison? If so, please provide any and all documents showing that such an agreement was entered into.

15. Please provide any and all documents related to the NRR and/or OI use of consultants at the Waterford nuclear power plant, including the consulting contracts, any confidentiality agreements, the March 12, 1985 OIA review of this arrangement, and any documents prepared subsequent to the March 12, 1985 review by any office of the agency (including OIA, EDO, OI, OGC, SECY, and any Commissioner's office). In addition, please respond to the following questions:

How many individuals were hired as consultants?

Which office sought the consultancy arrangement?

Which office approved the consultancy arrangement?

Were the then Commissioners informed of the consultancy arrangement prior to its being entered into?

What were the terms of the contract or Purchase Order to hire these individuals as consultants, i.e., per diem, travel, compensation arrangements?

What was the purpose for which these individuals were hired? For example, were these individuals hired to provide information about licensee wrongdoing to OI? Were these individuals hired to assist a technical inspection at Waterford?

Were these individuals treated as confidential sources by any component of the agency?

How much was each of these individuals paid under the consultancy arrangement? Were any of these individuals paid in cash?

16. Please provide any and all documents related to a followup audit of OI initiated by OIA in about 1985, including any final or draft audit reports, the auditor's working papers underlying those reports, and any OI documents relating to such followup audit (including a December 11, 1987 memo to file from Roger Fortuna).

I would appreciate your prompt attention to this matter.

Sincerely,

John Glenn

John Glenn
Chairman

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

April 14, 1989

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am enclosing responses to your letter of April 5, 1989.

Commissioner Carr has been on foreign travel for the past week and is, therefore, unable to respond to your questions of the individual Commissioners. His responses and responses of his staff will be forwarded as soon as practical.

The enclosed documents contain Privacy Act, FOIA, and internal agency management and personnel information and, therefore, we request that you preserve their confidentiality by restricting access and use to the Members and staff of the Committee. Should you have a question on the status of a particular document please contact me.

Sincerely,

Lando W. Zech Jr.
Lando W. Zech, Jr.

Enclosures:
As Stated

cc: Senator William V. Roth, Jr.

QUESTION 1. On February 23, 1989 I wrote you stating my intention to conduct a review of recent allegations concerning OIA investigations of OI, which included OIA's investigation of the Ellison allegations. On February 28, 1989, agency employees James Blaha and Edward Halman each discarded relevant file documents. On March 1, 1989, the agency first issued a notice to all employees to retrieve relevant files. Why did the agency wait until March 1st to issue such a notice, and what steps has the agency taken to ensure that no other relevant documents have been discarded, destroyed or altered?

ANSWER

After receipt of your February 23, 1989 letter indicating that you intended to conduct a review related to an ongoing OIA investigation, the Commission had expressed its concern to you and other members of Congress concerning potential harm to the integrity of the ongoing investigation and had requested that requests for documents be deferred until the investigation was complete. When it became clear that our requests would not be accepted, the March 1, 1989 memorandum was issued to begin the process of gathering the documents in question.

Prior to the issuance of the March 1, 1989 memorandum, we understood the primary concern of some Congressional staff, as related to our Office of Congressional Affairs, was with preserving the actual contract with Mr. Ellison. When that issue came to the attention of the Chairman's office, a copy of the contract was immediately obtained, date stamped, and maintained in the Chairman's office. Because some Congressional staff apparently were concerned that the Ellison contract might be destroyed, Mr. Bradburne stated specifically in his March 1, 1989 memorandum to affected NRC staff that all documents the subject of the Congressional requests should be preserved. A copy of that memorandum is attached. In addition, a member of the Commission Secretary's office was present to observe the preparation of an index of the OIA documents related to the investigation before the documents were forwarded for copying.

QUESTION 2. Please describe the knowledge of each Commissioner concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did each Commissioner learn of all or a portion of the Ellison allegations?

Who informed each Commissioner concerning these allegations?

What did each Commissioner learn from Mrs. Connelly?

What did each Commissioner learn from General Counsel William Parler?

What did each Commissioner know about the allegations during the period August 5, 1988 through February 23, 1989?

What did each Commissioner know about the agency's internal investigation of these allegations during that same period?

ANSWER

Chairman Zech

On August 26, 1988, while Chairman Zech was in the Soviet Union, he received a phone call from Commissioner Rogers concerning a request from Sharon Connelly for the authority to establish a fund to pay an alleger to obtain information. Chairman Zech was concerned with what appeared to be an unusual procedure and advised Commissioner Rogers to check with the General Counsel to determine if such action was permissible. The Chairman does not recall Commissioner Rogers mentioning either Mr. Fortuna's or Mr. Ellison's name during the conversation. He also does not recall anything being mentioned about tape recordings being involved.

Chairman Zech returned to the office on September 2, 1988, and on that date Mrs. Connelly briefed him on the contract she had arranged for obtaining the alleger's information. Mrs. Connelly informed the Chairman that the contract had already been signed and that the investigation was proceeding. At that time the Chairman first learned that Mr. Fortuna was involved in the allegations and that tapes were involved. Chairman Zech does not recall that Mrs. Connelly mentioned Mr. Ellison's name at that time. Upon learning that the General Counsel had not been informed of the details or subject of the investigation, Chairman Zech directed Mrs. Connelly to immediately brief the General Counsel.

After that briefing, although the Chairman had several periodic meetings with Mrs. Connelly as he does with a number of senior agency officials, he does not recall her mentioning the specifics of the investigation except to indicate that OIA was still working on the investigation.

From time to time, The Chairman's Legal Assistant, Bradley Jones, did pass on to the Chairman information based on Mr. Jones' phone calls with Mrs. Connelly. They were mostly in the nature of status reports. Chairman Zech does recall being informed by either Mr. Jones or his Executive Assistant, Mr. Rathbun, that the media and U.S. Attorney Guilliani may have been contacted by Mr. Ellison in December 1988 or January 1989. The Chairman also recalls being informed of plans to schedule an interview of Mr. Fortuna and of the various problems that developed associated with the interview. Sometime after the first of the year, Mr. Jones informed the Chairman about a mix-up with the Drug Enforcement Agency concerning Mr. Blaha.

The Chairman meets with the General Counsel frequently and, during the time in question, undoubtedly there was some discussion of this investigation. Chairman Zech does not recall having learned any specifics during those conversations different from what is described above. Chairman Zech discussed the legality of the contract and was informed that the contract would be in accordance with government regulations if the alleger had safety information. It was the Chairman's understanding that the decision to use a contract to obtain information and to involve Mr. Blaha in the investigation were based on possible safety information the alleger might have.

Commissioner Roberts

Commissioner Roberts' best recollection is that just prior to the hearing on February 23, 1989 he was informed by his legal assistant, Mr. Cutchin, that Mr. Ellison had made allegations concerning Mr. Fortuna and that OIA was investigating. Neither Mr. Parler nor Mrs. Connelly has ever discussed this matter with Commissioner Roberts.

Commissioner Rogers

On August 18, 1988 Sharon Connelly, Director of OIA asked to speak with me. I believe that she was visiting each of the Commissioners individually to inform them of her activities with respect to an OIA investigation of an OI employee. My Legal Assistant, Myron Karman attended the meeting with Sharon Connelly. We were told that OIA was interested in pursuing an arrangement with a Mr. Ellison whereby he would be compensated for turning over to OIA some tapes he had relating to some conversations he had with Roger Fortuna. To the best of my recollection I was not asked to give approval to such transaction but I did tell Sharon Connelly that nothing should be done with respect to any payments to Mr. Ellison until the Office of the General Counsel gave its opinion on the legality of such arrangement. I also questioned whether such arrangement was proper. In addition I emphasized that a clear public health and safety issue must be present to justify the use of NRC funds for any purpose.

On August 25, 1988, Mr. Max Clausen, Technical Assistant to Chairman Zech, came to my office to discuss with me, in my capacity as Acting Chairman, since Chairman Zech had departed for an overseas trip, the request by Sharon Connelly for funding to pursue investigations. On August 26, 1988 I spoke with Chairman Zech who was in the Soviet Union, and my recollection of such call was that we agreed that nothing should be done about any arrangement for collecting information without OGC clearance and an assurance of a public health and safety implication. On August 25, 1988 the General Counsel issued a memorandum to Sharon Connelly indicating that there was no budget justification for establishment of a fund. He also stated that if there was a public health and safety matter related to the request, OIA should seek OGC advice on the matter. The General Counsel said that the establishment of the fund raises a significant policy question which would have to be resolved by the Commission. I do not recall being advised about the Ellison allegations other than that it might reveal some wrongdoing on the part of Roger Fortuna that in Sharon Connelly's opinion had clear safety implications. I do not recall hearing anything more on this matter until some time in February 1989 when information relative to the subject of possible disciplinary action against Roger Fortuna was widely disseminated.

Commissioner Curtiss

Shortly following my swearing in as a Commissioner on October 20, 1988, roughly in the November-December timeframe, reference was made in separate discussions on unrelated subjects by William C. Parler, General Counsel, and Sharon Connelly, Director, Office of Inspector and Auditor, to an investigation involving an individual in the Office of Intestigations. To the best of my recollection, Mr. Parler mentioned that the investigation involved tape recordings and Mrs. Connelly indicated that the investigation involved an individual in the Office of Investigations, Roger Fortuna. There was no mention of Mr. Douglas Ellison at the time and no further details of the investigation were discussed. On or about January 31, 1989, Joseph R. Gray, my Executive Assistant, advised me of a conversation he had with Sharon Connelly and her statement that OIA was having difficulties in scheduling an interview with Roger Fortuna in conjunction with an ongoing investigation involving OI personnel. Mr. Gray did not have any information on the basis for, or substance of, the OIA investigation but he did relate Mr. Fortuna's management might direct Fortuna to submit to the OIA inverview if Fortuna continued to delay that interview. On or about February 9, 1989, Mr. Gray advised me that Hugh Thompson was about to issue a management directive requiring Mr. Fortuna to schedule the interview. On or about February 16, 1989, Mr. Gray told me that he had been informed that Mr. Fortuna finally had submitted to an interview but apparently had refused to cooperate. Mr. Gray also advised that Hugh Thompson was considering the possibility of taking disciplinary action against Mr. Fortuna for his refusal to cooperate. Again, Mr. Gray did not have any information on the substance or details of the OIA investigation or on who might have alleged wrongdoing that prompted the investigation. On or about February 22, 1989, I received a telephone call from Steve Ryan of the Senate Committee on Governmental Affairs inquiring about an investigation involving Roger Fortuna. Mr. Ryan briefly described the details of the investigation, including the facility involved, Nine Mile Point, and the individual who first made the allegations, Mr. Douglas Ellison. With respect to Mr. Ellison, Mr. Ryan indicated that Ellison had previously been involved in sexual wrongdoing of some sort. Mr. Ryan expressed a concern about the investigation, because of the questionable background of the alleger and because of what he suggested appeared to be a continuing pattern of retaliatory activity on the part of the Office of Inspector and Auditor against the Office of Investigations or individuals within that Office. Mr. Ryan asked me to look into the matter. In response to that call, I asked my Executive Assistant, Joseph R. Gray, to inquire as to the substance of the investigation. Following my inquiry, Mr. Gray informed me that:

1. Mr. Ellison was a former employee of Nine Mile Point who apparently had raised a number of safety concerns and made a number of safety-related allegations to the NRC during the time that he was employed there;

2. NRC Region I and OI apparently had looked into Ellison's safety allegations over the years and had confirmed a number of the allegations but that Ellison was dissatisfied with OI's handling of some of his allegations and claimed that Roger Fortuna inappropriately relied on the licensee's investigation and resolution of safety problems. These latter allegations and Ellison's claim that he has tapes of telephone conversations showing improprieties by Fortuna are the bases for the pending OIA investigation involving Fortuna; and

3. Ellison had been charged with molesting a babysitter but had pleaded guilty to some lesser offense.

QUESTION 3. Please describe the knowledge of any staff representative of a Commissioner's office concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989.

ANSWER

Chairman Zech

Bradley W. Jones, Legal Assistant to the Chairman

From August 21, 1988 until September 19, 1988 Mr. Jones was attending the Federal Executive Institute in Charlottesville, Virginia. Prior to leaving for the FEI, Mr. Jones had no knowledge of anything involving the Fortuna investigation or Mr. Ellison. On the weekend of August 27th and 28th Mr. Jones came into the office to go through his mail and noted the August 25, 1988 Memorandum from the General Counsel to Sharon Connelly. Mr. Jones attached no particular significance to the memorandum at that time other then wondering what had prompted OIA's inquiry.

Mr. Jones returned to the Office on September 19, 1988. To the best of his recollection, Ms. Connelly called Mr. Jones on either September 19th or September 20th to brief him on an investigation that had commenced during the time he was out of the office. She informed Mr. Jones that an alleger had made allegations concerning Roger Fortuna's actions that might potentially involve safety issues. In addition, there was a question of whether information was being provided improperly to persons outside the agency. She indicated that the alleger had tapes of conversations with Mr. Fortuna and that the NRC had contracted with the alleger to get the tapes before they were destroyed. Mr. Jones was informed that the allegations involved Nine Mile Point. At this time he was also informed that Mr. Blaha had been assigned by the EDO to help review potential safety aspects of the allegations.

At the time of Ms. Connelly's initial call to Mr. Jones, the Chairman was out of the country attending the Annual Conference of the International Atomic Energy Association in Vienna. She had indicated to Mr. Jones that the General Counsel was aware of the situation because, when she briefed the Chairman on September 2nd, the Chairman had directed her to brief the General Counsel on the matter.

QUESTION 3. (Continued) -2-

Over the next several month's Ms. Connelly called Mr. Jones at various times to brief him on the progress of the investigation. Although he does not have exact dates, the information he received follows, to the best of his recollection, in the order in which he received it.

In late September or early October Ms. Connelly called Mr. Jones to indicate that, in order to preserve the confidentiality of the investigation, she and Mark Resner had previously and might in the future take annual leave to perform investigative functions. She wanted to be sure that the leave would be restored. Mr. Jones told her that, absent any personnel regulation problems, he did not see a problem as long as she kept careful records of the activities conducted. Mr. Jones advised her to check with the General Counsel's office concerning whether the personnel regulations would permit the restoration of the leave. She also indicated that the investigation records were being handled carefully to assure the integrity of the investigation.

Later in the fall Ms. Connelly called Mr. Jones to inform him that a meeting was being set up with the U.S. attorney's office in Baltimore to determine if the Department of Justice had any interest in the investigation. After the meeting she called to indicate that, based on the meeting, the Department of Justice did not have any interest. During this general time frame, Mr. Jones recalls that he was also informed that Ms. Connelly had an FBI agent review the tapes to get his opinion as to whether Mr. Fortuna's conversations with the alleger could have been part of an investigative technique on the part of the Mr. Fortuna. She indicated that the FBI agent did not believe that Mr. Fortuna was engaged in an investigative technique. Later in the fall or early winter she indicated that an FBI supervisor reviewed the material and reached the same conclusion as the first agent.

Also in the late fall or early winter Ms. Connelly informed Mr. Jones that there was something peculiar in how the original Nine Mile Point allegations were referred to the Department of Justice. There was some question as to why no letter to the Department of Justice appeared to exist. She also indicated that, although OIA had an indication that a tape should have been part of the original OI investigative file, the OI office in Region I had indicated upon inquiry that no recording existed. Later, when OIA requested a copy of the file, either a reference to or the actual tape was found in the file.

Mr. Jones received phone calls from OIA concerning the status of the investigation at irregular intervals. During these conversations he learned that an interview with Mr. Fortuna had taken place on preliminary matters. At some point he was informed that the name of the alleger was Mr. Ellison. This name had no particular meaning to Mr. Jones. In addition, he learned that one of the tapes involved Mr. Comley. Although he was familiar with that name Mr. Jones was not aware that the tape of Mr. Comley had any particular significance to the overall investigation.

Shortly after the first of the year, Mr. Jones was informed that there was some mix-up as a result of Mr. Blaha's earlier presence at a local hotel to interview Mr. Ellison. As he understood the issue, Mr. Blaha had been mistakenly identified by a desk clerk as an individual that was being sought by the DEA. Mr. Jones advised Ms. Connelly to inform Mr. Blaha of the issue to be sure he would not be surprised if someone should approach him in spite of DEA assurances that the misunderstanding had been resolved. At around the same time, Mr. Jones also recalls Ms. Connelly calling to let him know that Mr. Ellison had apparently discussed the ongoing investigation with a television station in the New York City area and with Mr. Guilliani, who was a U. S. attorney in New York City at that time.

In the several weeks prior to issuance of the February 22, 1989 letter to Mr. Fortuna by Mr. Thompson, Ms. Connelly called Mr. Jones a number of times to inform him of the developments concerning OIA's attempts to interview Mr. Fortuna. He also was informed in early February that additional allegations against OI had been received from an alleger within the NRC. Finally, on February 22, 1989 he received a brief written description of all ongoing OIA investigations of OI, including the investigation involving Mr. Fortuna.

Dennis Rathbun - Executive Assistant to Chairman Zech

Mr. Rathbun accompanied the Chairman to the Soviet Union and was briefed by the Chairman regarding the phone call from Commissioner Rogers. Mr. Rathbun received from the Chairman a very brief description of the investigation in which Mr. Fortuna was involved after the Chairman was briefed by Ms. Connelly on September 2, 1988. Occasionally during the period from September 2, 1988 until February 23, 1989, Mr. Bradley Jones, Legal Assistant to Chairman Zech, would describe in general terms updates in the investigation. On one occasion, during Mr. Jones' absence from the office in December 1988, Ms. Connelly called Mr. Rathbun directly to report that Mr. Ellison may have contacted Mr. Guilliani, a U. S. attorney in New York City, to disclose his contract with NRC. Mr. Rathbun informed the Chairman of Ms. Connelly's call and informed Mr. Jones upon his return to the office.

Max Clausen - Former Senior Technical Assistant to Chairman Zech

On approximately August 24, 1988 Mr. Clausen received a phone call from Ms. Connelly indicating that OIA wanted to establish a fund to pay informants for information. Mr. Clausen advised Ms. Connelly to make sure everything was cleared with the General Counsel's office and informed her that Commissioner Rogers was acting Chairman while Chairman Zech was in the Soviet Union. Mr. Clausen does not recall being informed that Mr. Ellison or Mr. Fortuna were involved in the request, although Ms. Connelly did convey that the fund was needed for an ongoing effort.

Commissioner Roberts

Commissioner Roberts' legal assistant, Mr. Cutchin, was informed on or about August 24, 1988 by Mrs. Connelly that Mr. Ellison had made allegations involving possible wrongdoing by Mr. Fortuna and that OIA was investigating.

Commissioner Rogers

My Legal Assistant, Myron Karman, as indicated in response to #2 was present on August 18, 1988 when Sharon Connelly came to talk to me. He was on leave in Boston the following week but did call the Office and advised me that any such arrangement with Mr. Ellison, was a bad idea and the Commission should have no part of it. Mr. Karman advises me that he heard nothing more about the matter until February 1989.

Commissioner Curtiss

Joseph R. Gray, Executive Assistant to Commissioner Curtiss, was first made aware of the fact that Roger Fortuna was somehow involved in an OIA investigation on January 31, 1989 when Sharon Connelly called to advise that, as part of an ongoing OIA investigation of OI's handling of allegations about Nine Mile Point (the details of which she was not at liberty to divulge), OIA wanted to interview Fortuna. Ms. Connelly indicated that Mr. Fortuna had insisted on having his lawyer present at the interview and had delayed scheduling the interview several times on the grounds that his lawyer was unavailable. Ms. Connelly further indicated that if Mr. Fortuna delayed the interview much longer, his management might direct him to appear under threat of disciplinary action. There was no mention of Ellison at this time.

On or about February 9, 1989, Chairman Zech's legal assistant, Brad Jones, advised Gray that Hugh Thompson either had issued, or was going to issue, a management directive requiring Mr. Fortuna to submit to an OIA interview. Mr. Gray still had not been told about Ellison or his allegations or that Mr. Fortuna was the subject of the OIA investigation. When Gray asked Mr. Jones what this was all about, Jones merely indicated that OIA had been trying to interview Mr. Fortuna as part of a pending OIA investigation of OI personnel and that there were some tape recorded conversations involved.

On February 10, 1989, Ms. Connelly called and advised Gray that Mr. Fortuna was scheduled for an OIA interview on February 15. At the time of this call, Ms. Connelly indicated that she still was not at liberty to discuss the substance or details of the investigation.

On February 16, 1989, Ms. Connelly called and advised Gray that Mr. Fortuna did not cooperate during OIA's interview. She further indicated that Hugh Thompson was considering the possibility of some sort of disciplinary action -- possibly administrative suspension with pay until Mr. Fortuna agreed to cooperate.

On or about February 22, 1989, Steve Ryan of Senator Glenn's staff called Commissioner Curtiss and raised the matter of the Fortuna investigation. In turn, Commissioner Curtiss asked Gray to inquire as to the substance of that investigation. At that point, Gray pressed the Chairman's legal assistant, Brad Jones, for details about the investigation. Jones then stated to Gray that the investigation involved an alleger named Ellison from Nine Mile Point who apparently had some tapes of telephone conversations with Fortuna. Jones said that he would call Ms. Connelly and ask her to brief Gray on the investigation. Later that same day, Ms. Connelly stopped in and advised Gray that Ellison had alleged that OI and Fortuna had mishandled Ellison's allegations about safety problems at Nine Mile Point, that Ellison had tapes of telephone conversations with Fortuna which he claimed would show wrongdoing by Fortuna, and that OIA's investigation was, in fact, directed at Fortuna. During the course of the conversation, Ms. Connelly indicated that Ellison had been charged with sexually molesting a babysitter, that he had pleaded guilty to a lesser offense, and that Ellison thus was not very credible. Nevertheless, the tapes that Ellison possessed appeared to be genuine, according to Ms. Connelly. NRC's contract with Ellison was not mentioned in the course of this conversation.

QUESTION 4. What did each Commissioner know about Mr. Ellison's (a) background, (b) his history with Region I, OI and OIA, (c) allegations and/or convictions against him for sexual offense(s), and (d) his employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed each Commissioner concerning this information about Mr. Ellison? When was each Commissioner so informed?

ANSWER

Chairman Zech

During the time period in question, the Chairman's knowledge of Mr. Ellison was very limited and is described in the answer to question number 2. He does not recall any reference to Mr. Ellison's background, history, or allegations. He does recall Mrs. Connelly stating, during a periodic briefing in early 1989, that Mr. Ellison was unemployed and short of funds.

Commissioner Roberts

Commissioner Roberts' best recollection is that he knew nothing about Mr. Ellison's background, history with Region I, OI and OIA, allegations about/or convictions for sexual offenses, his employment status or financial condition prior to February 23, 1989.

Commissioner Rogers

I knew nothing at all about any of the items mentioned in question 4.

Commissioner Curtiss

See response to Question 2.

Sharon Connelly advised J. Gray of some of the details of OIA's Fortuna investigation on or about February 22, 1989. Immediately after his discussions with Ms. Connelly, Gray informed Commissioner Curtiss that:

(a) Ellison was a former employee of nine Mile Point who apparently had raised a number of safety concerns and made a number of safety-related allegations to the NRC during the time that he was employed there;

(b) NRC Region I and OI apparently had looked into Ellison's safety allegations over the years and had confirmed a number of the allegations but that Ellison was dissatisfied with OI's handling of some of his allegations and claimed that Roger Fortuna inappropriately relied on the licensee's investigation/resolution of safety problems. These latter allegations and Ellison's claim that he has tapes of telephone conversations showing improprieties by Fortuna are the bases for the pending OIA investigation involving Fortuna;

(c) Ellison had been charged with molesting a babysitter but had pleaded guilty to some lesser offense; and

(d) There was no discussion of Ellison's "employment status and financial condition" since Gray had no information on such matters.

QUESTION 5. Has the Commission as a body ever approved or disapproved the consulting arrangement the agency entered into with Mr. Ellison? If so, when was this action taken? Did any Commissioner individually approve of such an arrangement prior to its being entered into? Did any Commissioner individually approve of such an arrangement after it was entered into?

ANSWER

The Office of the Secretary has no records which would indicate that the Commission was asked about (or approved or disapproved) entering into the consulting arrangement with Mr. Ellison.

Chairman Zech

To his knowledge, Chairman Zech was never asked individually or as a part of the Commission as a whole to approve or disapprove the Ellison contract. The dollar amounts involved in the contract would not require the approval of either the Commission or the Chairman.

Commissioner Roberts

Commissioner Roberts' approval or disapproval has never been sought.

Commissioner Rogers

I never approved of any arrangement with Mr. Ellison prior to or after it was entered into.

Commissioner Curtiss

Commissioner Curtiss was not a member of the Nuclear Regulatory Commission at the time the agency entered into the consulting arrangement with Mr. Ellison. Since he joined the Commission, Commissioner Curtiss has not been asked to approve, and he has not approved, the consulting arrangement with Mr. Ellison.

QUESTION 6. What was the total cost for Mr. Ellison's services under the consulting arrangement and for the analysis of the materials provided by Mr. Ellison? Please include a breakdown of the total (a) lodging, meals and miscellaneous expenses paid to Mr. Ellison (at $117/day), (b) compensation paid to Mr. Ellison (at $40/hour), (c) transportation, reproduction, or other expenses paid to Mr. Ellison (at actual cost), (d) the cost of the hotel suite where Mr. Ellison met with Mrs. Connelly, Mr. Resner and Mr. Blaha, (e) the equipment, supplies and any other costs for this hotel suite, (f) the transcription costs of the Ellison cassettes and any other taped materials, and (g) any other costs or expenses.

ANSWER

The total cost for Mr. Ellison's services under the consulting arrangement and for the analysis of the material regarding safety and wrong-doing provided by Mr. Ellison are detailed as follows:

(a)	lodging, meals and miscellaneous (to Ellison) ($117/day x 16 days)	$1872.00
(b)	compensation paid to Mr. Ellison ($40/hr X 106 hrs)	4240.00
(c)	transportation (to Ellison) ($.22/mile x 1726 miles)	379.72
(d)	cost of hotel office	1451.37
(e)	supplies and reproduction services	179.49
(f)	transcription costs of cassettes and taped material	3368.75
(g)	other costs or expenses:	
	-- transportation and lodging costs for Ms. Connelly, Mr. Resner, Mr. Kraus, Ms. Rowe and Mr. Blaha for trip to Daytona Beach, Florida and Mr. Kerr and Mr. Resner to Region I office.	1760.50
	-- transcription costs for Mr. Fortuna's interview	206.00

QUESTION 6. (Continued) -2-

-- hourly wages paid to employees (716 hours) (Note: There was no specific accounting system established to collect this time therefore employees have made best estimates of time expended. Since this investigation was not a full time effort from August 1988 through February 1989, some employees did not have a high level of confidence in their estimates).	24,120.00

The above estimates do not reflect any cost incurred by Judge Rosenthal and his staff. His investigation is still in progress.

QUESTION 7. The agency established a fund to make the payments under the consulting arrangement with Mr. Ellison and any other payments related to the agency's investigation of his allegations (FIN: B8169, "Support for DEDROGR"). What does "DEDROGR" stand for? Please provide other documents which would show that prior to August 31, 1988, "Support for DEDROGR" was used in contexts other than the agency's internal investigation of Mr. Ellison's allegations against Roger Fortuna.

ANSWER

The DEDROGR stands for Deputy Executive Director for Regional Operations and Generic Requirements. The organization of the DEDROGR was set up in November 1981. The 1982 NRC Annual Report states "A significant staff realignment took place in November 1981, with the creation of the post of Deputy Executive Director for Regional Operations and Generic Requirements (DEDROGR) and of the Committee to Review Generic Requirements (CRGR), which is chaired by the DEDROGR." The 1982 Annual Report also states, "With respect to the backlog of regulatory actions - mainly those accumulated through the period when much of the NRC's time and effort was diverted to Three Mile Island follow-up - the DEDROGR was assigned responsibility to oversee the ordering of priorities and implementation of these corrective and precautionary actions at nuclear power plants" (see enclosure 1).

The position of the DEDROGR was abolished in the February 5, 1989 NRC reorganization and the new position of Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research was created.

The NRC Manual Chapters outlining the DEDROGR responsibilities are at enclosure 2 and 3.

The NRC's Office of the Controller maintains a Financial Identification Number (FIN) list showing the assignment of agency funds during each fiscal year. The attached copy of page 45 of the initial FY 1983 FIN list indicates that FIN B8169 Support for DEDROGR was a viable FIN on October 17, 1983.

Enclosures:
1. Excerpt from NRC 1982 Annual Report
2. NRC Manual Chapter 0103/0100-73
3. NRC Manual Chapter 0103/0100-50
4. FY 1983 FIN List, p. 45

QUESTION 8. Was the fund established to make the payments under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR") ever audited by any component of the agency? If not, why not? If so, what was the result of such audit? Please provide documentary evidence concerning the status and result of any such audit.

ANSWER

The fund referred to was established on August 31, 1988 as a subcashier imprest fund with Mr. James Blaha designated as the subcashier. This designation and advance of funds from the principal cashier was accomplished in accordance with established procedures.

Unannounced audits of NRC imprest funds are conducted by the Office of Inspector and Auditor (OIA) at least once a year. Since the subcashier's imprest fund was in existence for only about a month, the fund was not in existence when the OIA audits were performed in 1988.

However, in accordance with established procedures, a member of the Controller's staff arrived on September 14, 1988 to perform the quarterly verification of the headquarters imprest funds. Since it was anticipated that the subcashier's imprest fund would be closed out prior to September 30, 1988, the Controller informed his staff member that it did not appear necessary to verify the fund at that time and again in a few weeks. Subsequently, the Controller personally verified the imprest fund on September 26, 1988 and it was also independently verified by the principal cashier on that date as part of the subcashier imprest fund close-out process in accordance with established procedures. No irregularities or discrepancies were noted. Copies of the executed fund verification actions are attached.

Enclosures:
Fund Verifications

QUESTION 9. Based on what the Commission now knows, does the Commission as a body today approve of the consulting arrangement the agency entered into with Mr. Ellison? If so, why? If not, why not?

ANSWER

It is not clear whether the Commission would approve or disapprove the contract based on what the Commission knows today. First, the contract did not require Commission approval because of the amount of money involved in the contract. Second, as a matter of practice, the Commission does not interfere with OIA investigations. The Commission may have asked additional questions before the contract was entered into based on what the Commission now knows. Whether the Commission would have affirmatively stepped in to prevent the contract from being signed would have depended on the answers to those questions. There would have had to have been a very compelling situation before the Commission would have interfered with the independence of OIA's activities.

QUESTION 10. From the Commission's perspective, during August or September 1988, was there any legal or other impediment to the Commission's issuing a subpoena for the materials in Mr. Ellison's possession relating to his allegations? If so, please identify such impediment(s).

ANSWER

Based on advise from the General Counsel's office, there was no legal impediment to the issuance of a subpoena to Mr. Ellison.

However, the process of enforcing a subpoena against a reluctant recipient can delay receiving information for weeks or months.

QUESTION 11. Was Mr. Steven Goldberg, a Nuclear Engineer on OIA's staff, or any other OIA employee trained in technical or safety issues, available to review the technical or safety aspects of Mr. Ellison's allegations between August 5, 1988 and September 18, 1989? If not, why not?

ANSWER

During the period from August 5, 1988 to September 18, 1988, Mr. Goldberg was available to review the technical aspects of Mr. Ellison's allegations, except for the period from August 15 - 23, and 26, and September 1 and 12, when he was on annual leave. Between August 5 and September 18, 1988, Mr. Goldberg principally worked on higher priority assignments than the Ellison investigation, principally an investigation involving the Oyster Creek Nuclear Generating Station and an audit of NRC's research program. Mr. Goldberg is the only OIA employee with formal technical training.

It should be noted that when OIA asked the EDO for resource augmentation, OIA was not seeking technical assistance. Rather, OIA needed administrative support such as audio tape copying equipment, court reporter services, computer support, video player equipment, and contract assistance. In order to preserve the confidentiality of the interviews with Mr. Ellison in the early stages of the inquiry, it was necessary to seek support from outside OIA. If OIA employees had sought this support, which involved several other offices in NRC, attention would have been drawn to OIA's activities, thus potentially compromising OIA's investigative effort.

When Mr. Stello was asked to provide administrative support, he asked Mr. Blaha to assist OIA. Mr. Stello also asked Mr. Blaha to identify for him any safety issues that should be addressed immediately. This did not preclude the OIA investigators from also identifying safety issues.

It was recognized by OIA that when they began their review of how the NRC staff addressed Mr. Ellison's technical concerns, Mr. Goldberg's assistance might be required; and, in fact, Mrs. Connelly informed Mr. Goldberg during the later part of 1988 that his assistance might be sought on this case in the near future. However, because all the investigative facts had not been gathered, Mr. Goldberg was not assigned to this case.

QUESTION 12. Does the Commission as a body today approve of Mr. Stello's and Mr. James Blaha's involvement in the agency's internal investigation of Mr. Ellison's allegations? If so, why? If not, why not?

ANSWER

While the Commission has not reviewed in detail the individual actions of Mr. Stello and Mr. Blaha in the ongoing investigation, in general, the appropriate place for Ms. Connelly to have gone if she needed technical support for this or any other investigation was the EDO's office. To this extent her contacting Mr. Stello about this investigation was appropriate. As for the EDO's assignment of James Blaha to help OIA, the Commission is not aware of anything that would indicate that Mr. Blaha was not an appropriate choice for the assignment.

QUESTION 13. Please provide any and all documents related to Mr. Mark Resner's receiving a $3,500 monetary award based upon the recommendation of Mrs. Sharon Connelly.

ANSWER

Mr. Resner received a $3,500 award based on his outstanding performance in 1988. A copy of the award nomination, supplemental payroll data, and performance appraisal are enclosed. Please note the original award nomination was signed and forwarded by Mrs. Connelly on or about December 30, 1988. This document was discarded because of markups and she signed a new request on February 22, 1989.

Enclosures:
1. Award Nomination
2. Supplemental Payroll Data
3. Performance Appraisal

QUESTION 14. Did OIA or any other component of the agency enter into a confidentiality agreement with Mr. Ellison? If so, please provide any and all documents showing that such an agreement was entered into.

ANSWER

We are not aware of any NRC organizational component which entered into a confidentiality agreement with Mr. Ellison, with the exception noted below.

John Austin, Acting Chief, Medical, Academic and Commercial Use Safety Branch, provided the following response:

> "This response is my best recollection of my interactions with Mr. Douglas Ellison in the 1986-1987 timeframe while I was on the staff of then Commissioner Asselstine."
>
> "In approximately late 1986, I accompanied Mr. Asselstine on a tour on the Nine Mile Point plants. Prior to that visit, a reporter contacted the Commissioner and asked if he would meet with Mr. Ellison in the vicinity of the plants. The reporter described some of the concerns of Mr. Ellison and indicated that she had extensive interviews with him. Mr. Asselstine agreed to a meeting."
>
> "Mr. Asselstine and I met with Mr. Ellison during the evening of our trip to Nine Mile Point in Mr. Asselstine's motel room. Mr. Ellison indicated that he wanted the meeting to be treated as confidential. I believe Mr. Asselstine agreed; however, no formal confidentiality agreement was developed nor was there an understanding developed as to what was to be considered confidential, since Mr. Ellison had indicated his concerns were well known. I believe Mr. Asselstine asked Mr. Ellison what he expected to accomplish by having the meeting, to which Mr. Ellison indicated that he wanted to make sure that Mr. Asselstine was aware of the concerns."
>
> "Mr. Ellison then proceeded to describe his concerns about electrical connectors at Nine Mile Point Unit 1. He indicated that he had been secretly audio taping his conversations with plant employees, including management; that the utility was now aware that he had taped conversations; and that the reporter was aware of this. The meeting ended after about 90 minutes with Mr. Ellison promising to send Mr. Asselstine documentation of his concerns."

"About several months later, Mr. Ellison sent to Mr. Asselstine's Office a brief letter that had as an enclosure an audio cassette marked personal and confidential. At Mr. Asselstine's request, I listened to the cassette. At one point in a taped conversation between Mr. Ellison and a plant manager, Mr. Ellison indicated that he had taken off-site some electrical connectors from the bottom of the reactor vessel to serve as evidence of deficiencies. With Mr. Asselstine's approval, I called Mr. Ellison to tell him there was not much I could do with the cassette since it was marked personal and confidential. Mr. Ellison responded that he did not recall marking it personal or confidential, and that he did not care what I did with the cassette since everyone knew about his taping conversations. I then informed Mr. Ellison that he was not authorized to possess electrical connectors that, in all likelihood, had been contaminated. I urged him to return them to the site or to give them to Region I. Mr. Ellison then said he had never removed electrical connectors from the site.

"After that conversation, I called Region I (I do not recall to whom I talked with) to inform them of the potential for contaminated electrical connectors having been taken from the Nine Mile Point site. Region I agreed to pursue the matter and several days later called back to say Mr. Ellison denied having taken electrical connectors from the site."

"At some time later, in the first half of 1987, I gave the cassette to OI (Bill Ward, I believe) with a hand written memorandum describing what I knew about the cassette (I did not keep a copy of that memorandum). At that point, I viewed my involvement with Mr. Ellison to be closed and have had no involvement with Mr. Ellison or any matter related to Mr. Ellison since then. In fact, it was not until the end of February 1989, that I learned that Mr. Ellison was involved in allegations being investigated by the Nuclear Regulatory Commission."

"I have no documents regarding a confidentiality agreement with Mr. Ellison."

QUESTION 15(b). How many individuals were hired as consultants?

ANSWER.

Three individuals were hired as consultants to assist an NRC technical team at the Waterford station.

QUESTION 15(c). Which office sought the consultancy arrangement?

ANSWER.

The consultancy arrangement was sought by the Office of Nuclear Reactor Regulation (NRR). At that time, NRR was responsible for conducting a technical review of the adequacy of construction at the Waterford station.

QUESTION 15(d). Which office approved the consultancy arrangement?

ANSWER.

The consultancy arrangement was administratively approved by the Office of Administration, however, the Office of Nuclear Reactor Regulation proposed the action and the Office of Investigation concurred.

QUESTION 15(e).	Were the then Commissioners informed of the consultancy arrangement prior to its being entered into?

ANSWER.

Only Commissioner Roberts was on the Commission at the time the contracts were effected. He does not recall anything about these contracts.

However, NRC records show that the contracts were effected in early 1984. The Office of the Secretary records indicate that the Commission was briefed on the status of investigations at Waterford on August 1, 1984. The use of contract consultants by the NRC staff was discussed at this meeting. A copy of the transcript is attached. SECY has no record of Commissioners being informed of the contract prior to this meeting.

QUESTION 15(f).	What were the terms of the contract or Purchase Order to hire these individuals as consultants, i.e., per diem, travel, compensation arrangements?

ANSWER.

A copy of the three contracts is included in the documents provided in accordance with Question 15(a). The separate contracts for each of these consultants provided that they be paid at a daily rate in compensation for lost wages. In addition, each person was paid at standard government per diem rates and air transportation to and from New Orleans was provided by Government Travel Request (GTR). The daily rates paid were $150/day, $280/day, and $260/day.

QUESTION 15(h). Were these individuals treated as confidential sources by any component of the agency?

ANSWER.

One of the three individuals was formally granted confidentiality. A copy of the agreement is included in the documents provided in Question 15(a). The identity of the other two individuals has been treated as confidential, although no formal agreement was signed.

QUESTION 15(g). What was the purpose for which these individuals were hired? For example, were these individuals hired to provide information about licensee wrongdoing to OI? Were these individuals hired to assist a technical inspection at Waterford?

ANSWER.

These individuals were hired to assist an NRC technical inspection team in their review of the adequacy of construction at the Waterford station. They were not hired to provide information about licensee wrongdoing to OI. The manner in which these individuals assisted the NRC technical staff is further described in the enclosed April 7, 1989 memorandum from Ben Hayes, Director, Office of Investigations to Edward Fay, Office of Congressional Affairs.

Enclosure:
As stated

QUESTION 15(i). How much was each of these individuals paid under the consultancy arrangement? Were any of these individuals paid in cash?

ANSWER.

Enclosed is a memorandum from Richard Herr, Director, Office of Investigations Field Office, Region IV, to Graham Johnson, Deputy Director, Accounting, dated October 23, 1984, which details the amounts paid to the three sources of information in the Waterford matter under the NRR contracts. Travel tickets were obtained on Government Travel Requests. The amounts received through NRC Forms 1164 and 64 cover travel-related to other miscellaneous expenses. These amounts were paid to the sources in cash and receipts were obtained. The loss of salary reimbursement were paid by U.S. Treasury checks.

Enclosure:
As stated

QUESTION 16. Please provide any and all documents related to a followup audit of OI initiated by OIA in about 1985, including any final or draft audit reports, the auditor's working papers underlying those reports, and any OI documents relating to such followup audit (including a December 11, 1987 memo to file from Roger Fortuna).

ANSWER.

The files at OI Headquarters have been reviewed and the enclosed documents appear to pertain to the followup audit of OI initiated by OIA in about 1985.

Attachment 33 is the December 11, 1987 memo to file from Roger Fortuna.

Enclosures:
Index of OI Documents w/documents att.

JOHN GLENN, OHIO, CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 5, 1989

Mr. Victor Stello, Jr.
Executive Director for Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Stello:

As you know, I am reviewing the Nuclear Regulatory Commission's handling of an internal investigation involving allegations raised by Douglas Ellison in August 1988. According to an internal OIA document dated August 5, 1988, these included allegations against Roger Fortuna and others.

In order for me to complete this review, I would appreciate receiving the answers to the following questions no later than close of business on April 14, 1989:

1. Please describe your knowledge concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did you learn of all or a portion of the Ellison allegations?
Who informed you concerning these allegations?
What did you learn from Mrs. Connelly?
What did you learn from General Counsel William Parler?
What did you learn from Mr. James Blaha?
What did you know about the allegations during the period August 5, 1988 through February 23, 1989?
What did you know about the agency's internal investigation of these allegations during that same period?

2. What did you know about Mr. Ellison's (a) background, (b) history with Region I, OI and OIA, (c) allegations and/or convictions concerning sexual offense(s), and (d) employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed you concerning Mr. Ellison? When were you so informed?

3. What was your relationship to the fund established to make the payments under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR")? Did you ever refuse to allow such fund to be audited by any component of the agency? If so, why?

I would appreciate your prompt attention to this matter.

Sincerely,

John Glenn

John Glenn
Chairman

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 14 1989

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

I am responding to your letter of April 5, 1989 in which you ask numerous questions about my involvement in an investigation related to the Office of Inspector and Auditor (OIA) at the Nuclear Regulatory Commission (NRC). I am pleased to have the opportunity to provide this response. I believe it is important to describe fully and in proper context the facts, issues, and decisions made during this investigation.

Mrs. Connelly came to see me in August of 1988 to solicit my help in an investigation she was initiating regarding new allegations by Mr. Douglas Ellison. Mr. Ellison had alleged wrongdoing by NRC employees (one of whom was Mr. Fortuna) and also alleged that NRC had not adequately addressed safety issues he had previously provided to NRC. Furthermore, Mrs. Connelly reported that Mr. Ellison said he had new safety allegations which had not previously been provided.

As you are now aware, and as I knew in 1987, Mr. Ellison was an instrument and control technician employed by Niagara Mohawk Power Corporation at the Nine Mile Point Unit 1 facility when he first made allegations in 1986 involving a number of activities with which he had direct knowledge and information. Many of these allegations were substantiated by subsequent inspections by the Nuclear Regulatory Commission. A number of these allegations resulted in the identification of violations of NRC requirements, which eventually culminated in the payment of a $50,000 civil penalty by Niagara Mohawk Power Corporation in May 1987. Therefore, Mr. Ellison had demonstrated that he indeed did have factual information which led to confirmation that NRC requirements were violated at the Niagara Mohawk Nine Mile Point Unit 1 facility.

Mrs. Connelly informed me that Mr. Ellison would not cooperate and provide all of the information he had unless he was reimbursed for his effort. It was her understanding that the only way this could be accomplished was to reimburse him under a contractual arrangement for his time and expenses. Since she did not have the authority to approve such a contract, she requested that I do so if I determined it was necessary to conduct the agency's business. I discussed the matter of my authority with the NRC General Counsel, Mr. William Parler, who confirmed that I had such authority. We did not discuss specifics concerning the proposed contractor or the subjects of the investigation.

Mrs. Connelly also requested that I provide someone on my staff to assist in arranging the administrative, contractual, and financial details involved in any arrangement with Mr. Ellison. She did not want to use other members of her staff because she was concerned that details of the investigation would be leaked to the Office of Investigations (OI). She believed it was critical to keep Mr. Ellison's name confidential since acknowledgement that OIA was pursuing his allegations might compromise the investigation. I chose Mr. James Blaha to assist Mrs. Connelly because I trusted him, he was between assignments, and he was familiar with contractual and financial processes. Mr. Blaha also was familiar with handling of agency safety issues and allegations and therefore could provide me with information on potential safety issues.

At this point I was not ready to approve proceeding with the contractual arrangement. I wanted additional substantiation that Mr. Ellison's allegations warranted further pursuit. Mrs. Connelly and I agreed that she, her Assistant Director, Mr. Mark Resner, and Mr. Blaha would interview Mr. Ellison near his home at Daytona Beach, Florida. This was done on August 29 and 30, 1988. Upon their return they briefed me on the results of their interview. They reported that Mr. Ellison had dozens of tape recordings and boxes of documents which he believed supported his allegations. Mr. Blaha informed me that there was additional information regarding new safety allegations for Nine Mile Point Unit 1 related to:

A. An unreported fire in the reactor dry well
B. Use of drugs by employees at the facility
C. A safety pump that may not work
D. Control rod pump drive problems
E. Inadequate security of the process computer system
F. Previous allegations not handled adequately by NRC Region I and the Office of Investigation

The potential safety significance of these allegations, if they are substantiated, is clear. For example, a fire in a reactor dry well raises serious questions about: the potential damage caused by the fire itself; the circumstances which allowed the fire to start; the adequacy of plant procedures intended to prevent fires; compliance with such procedures; and the possible cover-up of the fire's occurrence. Also, employees who use drugs and perform any plant safety functions are clearly unacceptable in a nuclear power plant.

Each of the other topics above also raises serious concern about adherence to procedures, records falsification, status of maintenance, and the general attitude about safety at the plant. A significant portion of the escalated enforcement actions taken by the NRC over the years has involved similar issues. More important than each specific allegation is the concern that an organizational culture may exist which does not place proper emphasis on safety issues, especially with regard to procedures, quality assurance, and conduct of maintenance.

At the time Mr. Blaha briefed me on these new allegations, Nine Mile Point Unit 1 had been shut down since December 1987 but was projected to start up again in the fall of 1988. For that reason, I felt it was important to promptly pursue these allegations; therefore, I approved the contract.

During the course of subsequent interviews with Mr. Ellison, Mr. Blaha kept me informed of additional information about safety issues. Because the projected startup date for the plant had slipped, there was no immediate need to address these issues. Mr. Blaha documented the safety issues during the interviews with Mr. Ellison with the intent that they would be pursued by the NRC before startup. At that time, it was expected that the investigation of employee misconduct would be completed and the need for confidentiality would end well before the plant would be ready for startup. However, the current projected startup date is for the summer of this year. In recognition of the near-term startup of the plant, I have asked James Taylor, my Deputy, to request Mr. Rosenthal to make the information regarding these new allegations, gathered by Mr. Blaha and others, available to Mr. Taylor so that these issues can be pursued by the technical staff prior to the startup of the facility.

Although I recognized at the time that I authorized the contract with Mr. Ellison that my involvement in an OIA investigation of allegations against members of the OI staff could be misperceived by some and probably criticized, my overriding concern was to assure public health and safety. I was also, of course, concerned about the possibility that members of my staff might be compromising sensitive investigative information, and thus I felt that this matter needed to be investigated. In fact, had this information come to my attention from other sources, I would have requested an OIA investigation. In no way have I attempted to influence or steer the course of the OIA investigation. I am convinced that I acted in the best interest of safety and responsible management, given what I was told about Mr. Ellison's willingness to cooperate and the nature of his allegations.

As I stated, I was aware that my action might well, because of misperceptions, lead to an investigation such as the present one. However, I would much rather respond to this investigation than to the one which would occur had I not pursued safety allegations which were later determined to have contributed to an accident.

I trust my explanation is responsive to your concerns. Responses to your specific questions are enclosed.

Sincerely,

Victor Stello, Jr.

Victor Stello, Jr.
Executive Director
for Operations

Enclosure:
Answers to Questions

cc: Senator William V. Roth, Jr.

QUESTION 1: Please describe your knowledge concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did you learn of all or a portion of the Ellison allegations?

- Who informed you concerning these allegations?
- What did you learn from Mrs. Connelly?
- What did you learn from General Counsel William Parler?
- What did you learn from Mr. James Blaha?
- What did you know about the allegations during the period August 5, 1988 through February 23, 1989?
- What did you know about the agency's internal investigation of these allegations during that same period?

ANSWER.

In mid to late August 1988, Mrs. Connelly requested my help in an investigation she was initiating because of allegations she received from Mr. Ellison. She indicated that Mr. Ellison alleged wrongdoing by NRC employees, including Roger Fortuna; that he also alleged that NRC had not adequately addressed the safety issues that he had provided in 1986; and that he had additional safety allegations that had not previously been provided to the NRC. Mrs. Connelly informed me that Mr. Ellison would not cooperate and provide all of the information he had unless he was in some way reimbursed for his efforts. She explained that Mr. Ellison was having significant financial difficulty and emphasized that he was not prepared to spend time and effort explaining these allegations without being reimbursed for his services. Mrs. Connelly further explained that she did not have the authority to enter into a contract for this purpose, but it was her understanding that I, in fact, did have the authority to do this if I determined that it was necessary for the conduct of agency business.

During my discussion with Mrs. Connelly, I made it clear that I saw a division of responsibility with regard to the investigation of Mr. Ellison's allegations. Mrs. Connelly was responsible for employee wrongdoing issues. I, on the other hand, would be responsible for pursuing safety issues. I concluded the discussion and indicated that I would go forward with a contract when I had information to suggest there were safety issues that warranted further regulatory action.

I then decided that Mr. Blaha, who was between assignments and readily available, could accompany Mr. Resner and Mrs. Connelly to interview Mr. Ellison near his Daytona Beach, Florida, residence to get further information regarding these allegations. Mr. Blaha was chosen because of his familiarity with administrative, contractual, and financial processes and his general familiarity with the handling of agency safety issues and allegations. I had complete confidence and trust in Mr. Blaha's ability to do the job and to maintain the strict confidence that Mrs. Connelly indicated was necessary.

During a meeting in late August (and prior to the trip to Florida), Mrs. Connelly, Mr. Parler, myself, and possibly either Mr. Herr or Mr. Resner discussed alternative ways to get the infromation from Mr. Ellison, including the use of a subpoena. Mrs. Connelly believed that issuing a subpoena was not a viable option because Mr. Ellison's cooperation was necessary for the information he had to be of value. As I indicated earlier, she believed Mr. Ellison's cooperation without reimbursement was not possible. The meeting concluded with my believing that the only viable option for obtaining the information was to enter into a contract with Mr. Ellison to obtain the cooperation necessary for getting useful information.

I recall that during this discussion I noted that Mr. Ellison had previously provided allegations regarding safety issues at Nine Mile Point Unit 1 and that some of these allegations were substantiated. In particular I recall stating that Mr. Ellison's allegation that he had used an unqualified Radio Shack connector in the reactivity control system of the Nine Mile Point Unit 1 reactor was substantiated. (This system is an important safety system in the plant because it is relied on for shutting down the reactor in an emergency.)

I asked Mr. Parler to confirm that I had authority to enter into a contract to obtain safety-related information. I relied on his assurance that I indeed had the legal authority to enter into a contract to obtain information that I determined to be necessary to carry out the agency's public health and safety responsibilities.

Mr. Blaha, Mr. Resner, and Mrs. Connelly then spent a day talking to Mr. Ellison near his Florida residence. As I have explained in my cover letter, upon his return from that visit, Mr. Blaha informed me that there were new safety allegations.

At that point, given Mr. Blaha's description of the dozens of tape recordings and documents that Mr. Ellison possessed, I had no reason to doubt that Mr. Ellison would in fact provide important safety information regarding various activities at the Nine Mile Point Unit 1 facility. This judgment was reinforced because a number of allegations made by Mr. Ellison in 1986 were substantiated and showed that violations of our requirements existed and eventually led to a $50,000 civil penalty that was paid by Niagara Mohawk Power Corporation.

In summary, before authorizing the contract I was persuaded that there were safety issues that had to be pursued, and I was aware that there were serious allegations regarding the mishandling of investigations by NRC employees, including Mr. Fortuna. Before authorizing the contract I was aware that there were recorded conversations with Mr. Fortuna that raised serious questions in my mind regarding his conduct. I recall specifically pointing out to Mrs. Connelly that the issues of the investigation of NRC employees' misconduct was her responsibility, but that in my judgment the conduct of an investigation was warranted.

After Mr. Blaha briefed me, I received a memorandum from Mrs. Connelly dated September 1, 1988. It requested that I set up a consulting contract with Mr. Ellison. I authorized that contract, and it was issued on September 1, 1988.

During the conduct of the investigation, I was informed from time to time by both Mr. Blaha and Mrs. Connelly, in very general terms, of the overall status of the investigation. Mr. Blaha provided some additional details regarding Mr. Ellison's belief that our investigation of his earlier allegations was not thorough and, in some cases, had been incorrect. He provided details regarding Niagara Mohawk's failure to report information to the NRC that, in Mr. Ellison's opinion, should have been reported. Mr. Blaha indicated that from the documents and recordings provided he believed there was substantial evidence that the Niagara Mohawk Power Corporation had intimidated and harassed Mr. Ellison because of his pursuit of safety allegations. Mr. Blaha also indicated that the large bulk of Mr. Ellison's materials related primarily to technical and safety issues.

Mrs. Connelly also kept me informed of the status of the investigation, including her interactions with the FBI to determine if parts of the investigation should be taken over by the FBI. I was also made aware that she had contacted the Department of Justice for its consideration of potential criminal wrongdoing. I was kept informed of attempts to interview Mr. Fortuna during January/February 1989. These attempts eventually culminated in the proposed removal of Mr. Fortuna from his position for failure to comply with a management directive to appear for an on-the-record interview.

QUESTION 2: What did you know about Mr. Ellison's (a) background, (b) history with Region I, OI and OIA, (c) allegations and/or convictions concerning sexual offense(s), and (d) employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed you concerning Mr. Ellison? When were you so informed?

ANSWER:

(a) I knew Mr. Ellison had been employed as an instrumentation and control technician at the Niagara Mohawk Nine Mile Point Unit 1 facility.

(b) As I explained in the cover letter, I was aware of the allegations Mr. Ellison made to Region I and OI in 1986-1987. I am aware that the Region and OI pursued these allegations, many of which were substantiated. I am also aware that we advised Mr. Ellison to pursue his intimidation and harassment charges with the Department of Labor, which he subsequently did, and I understand that he reached a settlement with the company.

(c) Prior to August 5, 1988, I was made aware in general terms that there were allegations regarding unusual behavior by Mr. Ellison. I cannot recall any specifics concerning those allegations, nor can I recall who first informed me of them. Most likely it was Dr. Thomas Murley (the Administrator of NRC Region I) sometime in 1986 or 1987. Upon his return from Florida Mr. Blaha informed me that Mr. Ellison had pleaded guilty to some charge pertaining to sexual misconduct with a minor. I never focused on any specifics concerning Mr. Ellison's sexual offenses until the issue was raised as part of your investigation. I did not consider it relevant to whether Mr. Ellison possessed safety significant information, in light of the fact he had already provided NRC with substantiated safety allegations.

(d) Before I approved the consulting contract with Mr. Ellison, Mrs. Connelly informed me that Mr. Ellison was unemployed and was having difficulty providing for his family.

QUESTION 3. What was your relationship to the fund established to make the payments related under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR")? Did you ever refuse to allow such fund to be audited by any component of the agency? If so, why?

ANSWER.

I approved the establishment of an imprest fund to support expenses related to the agency's internal investigation of the Ellison allegations. I approved the suggestion that Mr. Ellison be paid in cash since the cutting of government checks could have compromised the confidentiality of Mr. Ellison's name. I also approved the obligations and payments from that imprest fund. Mr. James Blaha was the subcashier who managed the fund.

At no time did I refuse to allow the imprest fund to be audited by any component of the agency. I understand that there was one occasion when a fund verification was deferred. The Controller, Ronald M. Scroggins, who is familiar with the situation, has provided the following statement regarding this question:

> This fund was established on August 31, 1988 by the staff with monies from Financial Identification Number (FIN) B8169, Support for Deputy Executive Director for Regional Operations and Generic Requirements (DEDROGR) as an administrative convenience since it had been in existence for the last few years. The staff who selected the FIN had no knowledge of the subject of the investigation.

The fund was a subcashier imprest fund with Mr. James Blaha designated as the subcashier. This designation and advance of funds from the principal cashier was accomplished in accordance with established procedures.

Unannounced audits of NRC imprest funds are conducted by the Office of Inspector and Auditor (OIA) at least once a year. Since the subcashier's imprest fund was in existence for only about a month, the fund was not in existence when the OIA audits were performed in 1988.

However, on September 14, 1988 in accordance with established procedures, a member of my staff planned to perform the quarterly verification of the headquarters imprest funds. Since I had been informed that the subcashier's imprest fund would be closed out prior to September 30, 1988, I knew a close-out verifications would be required. I informed my staff member that it did not appear necessary to verify the fund at this time and again in a few weeks. Subsequently, I personally verified the imprest fund on September 26, 1988 and it was also independently verified by the principal cashier on that date as part of the subcashier imprest fund close-out process in accordance with established procedures.

629-1

✓ Dir
✓ DDir A
AD/AA
AD/TA
✓ AD/I
✓ Asst
File

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 25, 1988

MEMORANDUM FOR: Sharon R. Connelly, Director
Office of Inspector and Auditor

FROM: William C. Parler
General Counsel

SUBJECT: SPECIAL FUND

I have looked into the question you raised with me this morning on the establishment of an informant's fund.

I agree with the conclusions reached in the memorandum which is attached. I am not aware of any budget justification data in our existing authority which would authorize the establishment of such a fund.

Please note, however, that until this matter is resolved generically, if a situation arises in which you determine that the availability of such funds has a direct connection and is essential to carrying out an investigation that relates to the agency's public health and safety mission, you should promptly provide the facts and seek OGC advice on the specific matter.

Generally, for the future, the authority issue could be accommodated by including the need for such a fund in the relevant budget justification data for your functions.

Also, in addition to the question of authority, it is my judgment that the establishment of such a fund raises a significant policy question. The policy question would have to be resolved by the Commission.

William C Parler 8/25
William C. Parler
General Counsel

Enclosure:
Legal memorandum dtd 9/2/86

cc: Legal Assistants

629-2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SEP 2 1986

MEMORANDUM FOR: Ben B. Hayes, Director
Office of Investigations

FROM: Hudson B. Ragan
Assistant General Counsel for Administration
Office of the General Counsel

SUBJECT: EXPENSES OF CONFIDENTIAL SOURCES

By memorandum of July 17, 1986, you requested our opinion as to whether the Nuclear Regulatory Commission's (NRC) current appropriation law would provide the authority to support the payment of confidential sources for "information, travel, etc., and to reimburse investigators for appropriate related expenses".

For the current fiscal year, Congress has enacted a lump-sum appropriation for the necessary expenses of the NRC in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, under the broad category of "salaries and expenses". See, Energy And Water Development Appropriations, Publ. L. No. 99-141, 99 Stat. 577-78 (1985). The language of NRC's appropriations act does not expressly provide for the payment of informers for information on their expenses. However, the well-settled "necessary expense" rule of appropriations law is that an appropriation made for a specific purpose is available for expenses necessarily incident to accomplishing that purpose unless prohibited by law or otherwise provided for by some other appropriation. 6 Comp. Gen. 619, 621 (1927); U.S. General Accounting Office, Principles of Federal Appropriations Law, at 312 (1982). Given the absence of specific statutory authority in the appropriation act for such expenditures, the NRC's appropriations and other statutory authority must be analyzed to determine whether the purpose is authorized.

The NRC's appropriation "Salaries and Expenses" provides in pertinent part:

> For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended * * *

Energy And Water Development Appropriations, Pub. L. No. 99-741, 99 Stat. 577-78 (1985). Under Section 206 of the Energy Reorganization Act of 1974, as amended, the Commission is expressly "authorized to conduct such reasonable inspections and other enforcement activities as needed to insure

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629-3

compliance with the provisions of [Section 206]" subjecting persons to a civil penalty for knowingly and consciously failing to notify the Commission of any regulated facility, activity or basic component that (1) fails to comply with the Atomic Energy Act or (2) contains a defect creating a substantial safety hazard. Energy Reorganization Act of 1974, 42 U.S.C. § 5847 (1974). Furthermore, the Commission is authorized under the Section 161c of the Atomic Energy Act of 1954 to "make such studies and investigations, obtain such information . . . as the Commission may deem necessary or proper to assist it in exercising any authority provided in this act, or in the administration or enforcement of this Act * * *". Atomic Energy Act of 1954, 42 U.S.C. § 2201c. There are several provisions of the Atomic Energy Act that impose criminal penalties for the willfull or attempted violation of its provisions. See, Atomic Energy Act of 1954, 42 U.S.C. §§ 2272-73; 2284. Furthermore, there are provisions that impose criminal penalties on those (1) who harm nuclear inspectors in performance of their duties or (2) who intentionally and willfully sabotage or attempt to sabotage nuclear facilities or fuel. See, Atomic Energy Act of 1954, 42 U.S.C. §§ 2283-84. Thus, the Energy Reorganization Act and the Atomic Energy Act authorize the Commission to conduct such investigations and obtain such information it deems necessary to enforce certain civil and criminal laws. Nevertheless, both statutes are silent about the payment of informers as an investigative technique.

In supporting its request for the FY 1986 lump-sum appropriation, the Commission submitted its budget estimate to the House appropriations committee explaining how the Commission proposed to use the appropriation. For the Office of Investigations, the Commission stated in its budget submittal the following:

> The Office of Investigations is an independent office which conducts and supervises agency investigations of all allegations of wrongdoing by other than employees and contractors, including reactor licensees, fuel cycle licensees, and materials safety and safeguards and facilities licensees. * * * The Office of Investigations maintains liason with other agencies and organizations to ensure the timely exchange of information of interest and make appropriate referrals to the Department of Justice on criminal matters.

Energy And Water Development Appropriations For 1986: Hearings Before A Subcommittee of the Committee On Appropriations House of Representatives, 99th Cong., 1st Sess. 613 (1985). Neither the Commission's budget jusitification before Congress nor the related hearings informed Congress that the payment of informers is an investigative technique employed by the Commission in the administration or enforcement of the Energy Reorganization Act or the Atomic Energy Act. Since the NRC appropriation was made available for carrying out these purposes of the Energy Reorganization Act and the Atomic Energy Act, the Commission is vested with the discretion to determine which expenditures are necessary to assist in investigating and

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629-4

enforcing these laws. However, Comptroller General decisions make clear that in the absence of statutory authority expressly providing for the payment of informers for the furnishing of information regarding violations of civil and criminal laws, the information must be "essential or necessary" to the effective administration and enforcement of the law as distinguished from being merely "helpful or desirable" (See, 8 Comp. Gen 613 (1929); 9 Comp. Gen. 309 (1930); B-172259, April 29, 1971 (unpublished) B-183922, August 5, 1975 (unpublished); U.S. General Accounting Office, Principals of Federal Appropriations Law, at 3-177 - 3-178 (1982). Nevertheless, the Comptroller General decisions have not reached uniform results on this issue. In addressing this issue in 8 Comp. Gen. 613, 614 (1929) for the Secretary of the Interior, the Comptroller General Stated:

> An appropriation general in terms is available to do the things essential to the accomplishment of the work authorized by the appropriation to be done. As to whether such an appropriation may properly be held available to pay a reward for the furnishing of information, not essential but probably helpful to the accomplishment of the authorized work, the decisions of the accounting officers have not been uniform. The doubt arises generally because such rewards are not necessarily in keeping with the value of the information furnished and possess elements of a gratuity or gift made in appreciation of helpful assistance rendered.
>
> * * *
>
> There being grave doubt as to the propriety of regarding an appropriation general in terms available for the payment of such rewards, and the Congress having on many occasions accepted the matter as one for its consideration and expression, it appears the duty of this office to require those in administrative places who desire to offer rewards for information work, to submit their requirements to the Congress for specific legislative authority with respect to all appropriations hereafter to be made.

Although the reward to informers in that decision was allowed, the Comptroller General stated, as noted, that specific legislative authority would be required in the future and reiterated this position at the end of the decision (Id. at 615). Subsequently, the Comptroller General applied the holding it reached in 8 Comp. Gen. 613 to a decision involving the Secretary of Commerce, 9 Comp. Gen. 309 (1930). In 9 Comp. Gen 930, the Comptroller General held that the general appropriation for the Lighthouse Service of the Department of Commerce was not available for use by the Secretary of Commerce to offer awards for information leading to the apprehension and conviction of persons committing acts of vandalism against aids to navigation maintained by the Lighthouse Service. 9 Comp. Gen. 309, 311 (1930). Furthermore, the Comptroller General found that the proposed awards were not essential but merely helpful. The Comptroller General noted that the offering of awards was a new feature being considered by the Lighthouse Service regarding the enforcement of a law making it a

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misdemeanor and imposing a fine for obstructing or interfering with navigation aids maintained or established by the Service. Id. at 311. As such, the Comptroller General stated that the matter was appropriate for submission to Congress for consideration of whether the enactment specific legislation for that purpose is necessary or proper. Id.

On the other hand, the Comptroller General has rendered decisions that have permitted the expenditure of funds for the payment of informers in the absence of specific legislative authority for such expenditures. In B-183922 (August 5, 1975), the Comptroller General held that the compliance portion of the Internal Revenue Service's general appropriation statute providing for "necessary expenses of the Internal Revenue Service for investigation and enforcement activities * * *" was sufficiently broad to support expenditures for the protection, support and maintenance of an informant/witness except for periods in which the same witness also qualified for such support from the Department of Justice under the Organized Crime Control Act of 1970. B-183922, August 5, 1975 (unpublished). The Comptroller General observed that the IRS appropriation statute neither contained specific authority nor a specific appropriation for such expenditures. Furthermore, the legislative history of the appropriation statute was silent as to the meaning of "investigation and enforcement activities". Id. Thus, the Comptroller General reasoned that the Commission of the IRS was vested with a large measure of discretion as to which expenditure are necessary in aid of investigation and enforcement activities. However, the Comptroller General noted that, as early as 1969, Congress was expressly advised of the Treasury Department's extensive involvement in this area and did not object. For these reasons, the Comptroller General determined that the IRS's 1975 appropriation statute was sufficiently broad to support the expenditures in question. See, B-183922, August 5, 1975 (unpublished).

In an earlier decision involving the Forest Service, the Comptroller General held that the payment of compensation to informers for information concerning violations (such as deliberately set forest fires, theft of government timber, unauthorized occupancy, and vandalism) may be considered essential or necessary, as distinguished from helpful or desirable, in the effective administration and enforcement of a statute making the Forest Service responsible for protecting the national forests against destruction by fire and degradation, and authorizing it to regulate their occupancy and use, and preserve the forests from destruction (16 U.S.C. § 551). B-172259, April 29, 1971 (unpublished). The Comptroller General noted that the Forest Service appropriations provided for expenses necessary for forest protection and utilization and was specifically available for fighting and preventing forest fires. Id. After noting that "thousands upon thousands of dollars" damage to the national forests are caused by persons violating laws regarding use of the national service, the Forest Service informed the Comptroller General since prevention is not always possible their law enforcement efforts must rely on apprehension and prosecution. The Forest Service stated that leads to identifying culprits are very slim for some cases and that citizens cooperation in providing information must be heavily relied on. For some

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cases, the necessary information is not spontaneously offered or is intentionally withheld for possible monetary gain. Finally, the Forest Service noted that there potential informants usually possess information which could prove invaluable to successful investigation, identification and prosecution of violators. Id.

Except for the 1971 decision (B-172259, April 29, 1971 (unpublished), the Comptroller General has either strongly admonished agencies to seek specific legislative authority (8 Comp. Gen 613 (1929); 9 Comp. Gen 339 (1930) or relied on the fact that Congress had been informed by the agency of the activity and Congress did not object (B-183922, August 5, 1975 (unpublished).

Moreover, Congress has considered the issue and has granted statutory authority for rewards for the furnishing of information in several other situations. See, for example: 16 U.S.C. § 668 (information on capturing, buying or selling bald eagles); 16 U.S.C. § 1540(d) (violations of Endangered Species); 18 U.S.C. § 1751(g) (information concerning Presidential assassinations or attempted assassinations); 18 U.S.C. § 3056 (rewards by the Secret Service); 21 U.S.C. § 886 (information on violations of laws administered by the Drug Enforcement Administration); and 39 U.S.C § 404(a)(8) (information on violations of postal laws). These enactments create the implication that such expenditures should not be incurred except by express authority or by expressly informing Congress that such expenditures will be incurred.

As to whether other appropriations are available, we note that under the provisions of the Atomic Weapons and Special Nuclear Materials Rewards Act, the Attorney General is authorized to make a reward to persons who furnish original information to the United States concerning illegal introduction, manufacture, acquisition or export of special nuclear material or atomic weapons or conspiracies relating thereto. See, 50 U.S.C. §§ 47a, 47b (1974), 1974 U.S. Code Cong. & Ad. News 4050, 4052. It seems that appropriations to administer that law have been made to the Department of Justice. See, Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriation Act, 1986, Pub. L. No. 99-180, Title II, 1985 U.S. Code Cong. & Ad. News (99 Stat 1141). Consequently, the payment of informants in the context of investigations involving violations of the Atomic Weapons and Special Nuclear Materials Rewards Act would not be authorized because it would be an expenditure that comes within the scope of some other appropriation

Conclusion:

In the absence of specific legislative authority for paying informers for information concerning the violations of criminal or civil laws, there is no precise rule that can be formulated for when the NRC is authorized to pay informers. In each instance, the NRC's appropriations and other statutory authority must be examined to determine whether the purpose is authorized, along with evaluating the administrative justification that is offered. Without

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629-7

an explanation of the specific circumstances under which a particular payment is proposed, a sound determination that the payment is authorized becomes difficult to make. Even were such an explanation to be provided, a determination that such expenditures are authorized would not be on sound legal ground given that the Atomic Energy Act, the Energy Reorganization and the current appropriations act along with its legislative history are all silent on the use of such an investigative technique by the Commission. For the foregoing reasons, we are unable to conclude that such expenditures would be authorized and would advise your office to either have the Commission seek specific legislative authority, perhaps through a minor revision to next years appropriation act, or inform Congress through our budget justification supporting the appropriation act that such an investigative technique will be employed in our investigations for enforcement of the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. However, should a particular situation arise that you determine has a direct connection and is essential to carrying out an investigation on a violation of the Atomic Energy Act or Energy Reorganization Act, you should promptly seek our advice.

With respect to your reference to AEC Manual Chapter 1001, "Expenditures of A Confidential Nature", the NRC has no similar set of established procedures governing such expenditures. The AEC Manual Chapter 1001 is no longer effective or operative since it was not adopted by the NRC as part of its approved NRC Management Directives System. See, U.S. Nuclear Regulatory Commission NRC Manual Transmittal Notice (July 15, 1986); U.S. Nuclear Regulatory Commission Announcement No. 4 (January 20, 1975). Consequently, the AEC Manual Chapter 1001 does not represent an expression of current Commission policy regarding such expenditures.

/s/
Hudson B. Ragan
Assistant General Counsel
for Administration
Office of the General Counsel

cc: William C. Parler, OGC
Guy H. Cunningham, OGC
James A, Fitzgerald, OGC
James Murray, OGC

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NRC FORM 103
(8-87)
NRCM 6101

PURCHASE ORDER

POINT OF ISSUE: U.S. NUCLEAR REGULATORY COMMISSION

THIS NUMBER MUST APPEAR ON ALL PACKAGES AND PAPERS RELATING TO THIS ORDER

ORDER NUMBER 80-1303
DATE 9/2/80
REQUISITION NUMBER 186-73

INSTRUCTIONS. See billing address, lower left corner of this form

☐ PURCHASE ORDER PER YOUR ____ OF ____
☐ DELIVERY ORDER UNDER CONTRACT NUMBER ____

APPROPRIATION/ALLOTMENT 31X0200.808
FIN B8169
B & R NUMBER 80-19-01-00
CONSIGNEE AND DESTINATION (SHIP TO NRC WAREHOUSE UNLESS OTHERWISE SPECIFIED)
TO (Seller)
DELIVERY F.O.B.
PLACE OF INSPECTION AND ACCEPTANCE
DATE
DELIVERY DATE
DISCOUNT PAYMENT TERMS

PLEASE FURNISH THE FOLLOWING ON THE TERMS SPECIFIED ON BOTH SIDES OF THIS SHEET AND ON THE ATTACHED IF ANY EXCEPT THAT ANY SUCH TERMS WHICH MIGHT BE INCONSISTENT WITH THE TERMS OF ANY EXISTING FEDERAL CONTRACT OR AGREEMENT UNDER WHICH THIS ORDER IS PLACED WILL NOT APPLY

☒ NEGOTIATED PURSUANT TO THE AUTHORITY OF 41 USC 252(C) (3)

ITEM NO	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Provide consulting services to the U.S. Nuclear Regulatory Commission (NRC) as described in the Statement of Work which is attached hereto (Attachment I) and by this reference made a part hereof. Compensation and Reimbursement A. For consulting services, the contractor shall be paid at the rate of $40.00 per hour for the 100 hours of effort estimated under this contract. All work shall be scheduled and approved in advance by the NRC Project Officer. B. For subsistence, the contractor shall be reimbursed at the fixed rate of $117.00 per day, which includes lodging, meals and miscellaneous expenses. C. The contractor shall be reimbursed at actual cost for other expenses such as transportation, reproduction services, etc., as approved in advance by the Project Officer.				

PERSON TO CONTACT REGARDING THIS ORDER
TELEPHONE
AREA CODE
NUMBER
TOTAL

SUBMIT INVOICE IN DUPLICATE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE (P.O. NUMBER MUST BE INCLUDED) AND FORWARD TO

U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF RESOURCE MANAGEMENT
DIVISION OF ACCOUNTING AND FINANCE
WASHINGTON, D.C. 20555

SIGNATURE AND TYPED NAME
CONTRATING OFFICER

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COMMERICAL PAYMENTS

Page [illegible] of [illegible]

NRC FORM 103A
(8-80)
NRCM 5101

U.S. NUCLEAR REGULATORY COMMISSION

PURCHASE ORDER CONTINUATION

ORDER NUMBER
88-2303

186-74

INSTRUCTIONS. Purchase orders describing services may provide data crossing the "Quantity, Unit, Unit Price, and Amount" columns

NAME - CONSIGNER

ITEM NUMBER	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT

D. Payments shall be made by NRC, as authorized by the Project Officer, on a partial payment basis, either upon the comp contractor furnishing and analysing specific material or upon the following schedule, whichever occurs first:

End of first five-day period

End of second five-day period

End of third five-day period

Period of Performance

A. The period of performance of this contract shall commence on September 1, 1988, and end on September 16, 1988, unless sooner extended or terminated as hereinafter provided.

B. The NRC expects that the contractor will work diligently to accomplish the ends of this contract. If NRC concludes that sufficient progress is not being made, the NRC may terminate this contract at no additional cent cost beyond that incurred at the time of termination.

Special Terms and Conditions

In addition to the term and conditions referred referenced on the reverse of this Purchase Order, the following terms and conditions apply to the work to be peformed-be performed hereunder:

A. Except as specifically authorized in writing by the Project Officer, the Contractor may not discuss this contract or the information to be furnished the NRC hereunder with any person or the fact that an investigation is or may be ongoing.

4.S.E.

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COMMERCIAL PAYMENTS

NRC FORM 103A
(8-85)
NRCM 5101

U.S. NUCLEAR REGULATORY COMMISSION

PURCHASE ORDER CONTINUATION

Page [illegible] of [illegible]

ORDER NUMBER
88-1303

186-75

INSTRUCTIONS. Purchase orders describing services may provide data crossing the "Quantity, Unit, Unit Price, and Amount" columns

NAME CONSIGNER

ITEM NUMBER	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Technical Direction The NRC Project Officer under this contract is Sharon Connelly.				

For the Nuclear Regulatory Commission

Edward L. Halman
Division of Contracts and
Property Management

Contractor

Douglas S. Ellison

A

Attachment I

186-76

STATEMENT OF WORK

A. Objective

The objective of this contract is to obtain information which will assist NRC in determining whether and to what extent wrongdoing has occurred on the parts of NRC employees and the extent to which such activity may have jeopardized the safety of the public.

B. Scope of Work

The Contractor shall:

(1) Provide information about specific safety concerns and wrongdoing by NRC employees,

(2) Provide documentation in form of audio and video tapes, memoranda, other written documents, etc. which bear upon the objectives of this contract. Such documents shall be provided in original form, where available. The NRC agrees to provide the contractor copies of all documents furnished to NRC under this contract,

(3) Provide explanation, amplification and context for such documentation,

(4) Provide sworn statements in response to ~~queste~~ questions posed by the Project Officer or other NRC personnel, and, when and if accurate renditions of such statements are provided in transcript form, shall sign such statements as requested by the Project Officer,

(5) Cooperate with any administrative, civil and/or criminal proceedings which result from the contractual information and any facts developed from the information.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

#1
186-121

I hereby obligate and approve for payment the amount of $1000.00 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

8/31/88
Date

Victor Stello, Jr.
Executive Director for Operations

Received cash in the amount of $1000.00

8/31/88
Date

Victor Stello, Jr.
Executive Director for Operations

A

#2
186-122

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

I hereby obligate and approve for payment the amount of $1000 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

9/2/88
Date

Victor Stello, Jr.
Executive Director for Operations

Received cash in the amount of $1000.00

9/2/88
Date

Victor Stello, Jr.
Executive Director for Operations

A

#3
186-123

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

I hereby obligate and approve for payment the amount of $2000.00 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

9/6/88
Date

Victor Stello, Jr.
Executive Director for Operations

Received cash in the amount of $2001.00

9/6/88
Date

Victor Stello, Jr.
Executive Director for Operations

A

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

#4
186-124

I hereby obligate and approve for payment the amount of $2000.00 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

9/12/88
Date

Victor Stello, Jr.
Executive Director for Operations

Received cash in the amount of $2000.00

9/12/88
Date

Victor Stello, Jr.
Executive Director for Operations

A

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

#5
186-125

I hereby obligate and approve for payment the amount of $2000.00 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

9/15/88
Date

Victor Stello, Jr.
Executive Director for Operations

Received cash in the amount of $2000.00.

9/15/88
Date

Victor Stello, Jr.
Executive Director for Operations

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

#6.
186126

I hereby obligate and approve for payment the amount of $122.58 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

9/16/88
Date

Victor Stello, Jr.
Executive Director for Operations

Received cash in the amount of $122.58.

9/16/88.
Date

Victor Stello, Jr.
Executive Director for Operations

A

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

180-127

I have obligated and approved for payment the amount of $8,122.58 for necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act, as amended, and the Atomic Energy Act, as amended.

September 26, 1988
Date

Victor Stello, Jr
Executive Director for Operations

Appropriation Symbol: 31X0200.808
B&R No: 80-19-01-00
FIN: B8169

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190-16

Sept. 1, 1988

Memo for: Victor Stello, Jr., EDO

From: Sharon Connelly, Director, OIA Sharon Connelly

Subject: Allegations of Wrongdoing and Safety Concerns

This is to document previous discussions between us about allegations made by an individual concerning wrongdoing by an NRC employee and concerns about reactor safety issues. After personally interviewing the individual, I am convinced of the following:

- o The individual has information which is relevent, necessary and essential to further investigation of wrongdoing and safety-significant issues.
- o The individual will not provide this information unless he is reimbursed for the services and documentation he provides.
- o Complete confidentiality is essential to successful pursuit of this matter. This precludes use of conventional contractual, travel, and other reimbursement procedures which call for the identification of the individual's name.

Please set up a mechanism for confidential reimbursement of this individual for services and documentation he provides. I will be consulting with the appropriate members of your staff to ensure that accepted government guidelines are followed regarding contractual and reimbursement agreements.

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AFFIDAVIT AND SWORN DECLARATION
STEPHEN B. COMLEY

Under penalty of perjury, Stephen B. Comley states upon his oath that the following information is true and accurate to the best of his knowledge and belief:

1. My name is Stephen B. Comley. I reside at Mansion Drive, Rowley, Massachusetts. I am Executive Director of We the People, Inc., of the United States, a non-profit corporation with its principal headquarters in Rowley, Massachusetts. Among the stated purposes of We the People are to monitor and investigate the operation of nuclear power plants in the United States, to monitor and investigate the activities of the Nuclear Regulatory Commission, and to provide the public with information regarding the construction and operation of nuclear power plants.

2. I first became familiar with Douglas Ellison in the fall of 1986. Mr. Ellison contacted me after reading a column about me written by Mary McGrory. At the time Mr. Ellison first contacted me he had already provided Region I of the Nuclear Regulatory Commission with documents and testimony on alleged safety violations at Nine Mile Point in New York. Mr. Ellison also told me that he had conducted several press conferences in the New York area about his safety allegations at Nine Mile.

3. By way of background, I own and operate a nursing home in Rowley, Massachusetts. Prior to 1986, I had never had any

involvement in issues related to nuclear power. My involvement came about when I discovered that Rowley, in general, and my nursing home, in particular, were not included in the evacuation planning zone of the Seabrook Nuclear Power Plant in nearby Seabrook, New Hampshire, because we fall just outside the 10 mile radius. As a result of my concern, I organized an association called "Because We Care About Rowley and You". I was appalled to discover that the "evacuation plan" for persons, such as many as my nursing home, who cannot be moved was to give them a dosage of iodine in order to destroy their thyroid glands so that radiation would not spread to other organs. I was particularly concerned when, in August 1986, I was told by then-Commissioner James Asselstine that, in his opinion, there was a 50-50 chance of a Chernobyl-type accident in this country within the next 20 years. Because We Care About Rowley and You organized a petition drive in the Town of Rowley. Ultimately, a petition was submitted to President Ronald Reagan asking him to appoint an independent panel to investigate the NRC. The petition was signed by approximately 80 percent of Rowley's residents.

4. Because of these activities, I also began to be concerned about the safety of nuclear power and our country's nuclear power plants. Specifically, I was concerned that the Nuclear Regulatory Commission was promoting the nuclear power industry at the expense of public health and safety. In July 1987, We the People was formed in the hope that the American people

would have a greater voice in issues related to nuclear power.

5. In January 1987, I went to Washington, D.C. One of my primary purposes in going to Washington was to meet with representatives from the Department of Justice regarding the case of James Padovano, a welder at the Seabrook Nuclear Power Plant. Mr. Padovano had pleaded guilty in U.S. District Court in New Hampshire to falsifying welding inspection reports while at Seabrook. It was, and continues to be, my belief that Mr. Padovano was not alone in falsifying welding reports at Seabrook. In meeting with representatives of the Department of Justice, I hoped to convince them that the investigation should be reopened and that allegations of further falsification should be pursued.

6. While in Washington, Mr. Ellison met me at my hotel. I do not recall the specific date.

7. There were two telephone extensions in my hotel room. One was in the room itself and the other was in the bathroom. During the course of our stay, Mr. Ellison spent some considerable time in the bathroom. This was because I am a nonsmoker and Mr. Ellison is a chain-smoker. I did not permit Mr. Ellison to smoke in the hotel room, but did allow him to smoke in the bathroom where there was a separate ventilation system.

8. Prior to coming to Washington, I had spoken with Roger Fortuna, Deputy Director, Office of Investigations, NRC, on several occasions in his official capacity. I had told Mr. Fortuna

about Mr. Ellison. Any conversations between Mr. Fortuna and me about Mr. Ellison were initiated by me. To my recollection, I told Mr. Fortuna that I had been contacted by Mr. Ellison; that Mr. Ellison told me he had documented evidence of safety violations at Nine Mile that he had not turned over to the NRC; and that Mr. Ellison felt his information could be useful to me. I also told Mr. Fortuna that Mr. Ellison had told me he was under indictment in the State of New York for making sexual advances to a minor.

9. In the past couple of months, I have become aware that the NRC has been conducting an investigation into allegations of misconduct on the part of Mr. Fortuna and that Mr. Ellison is the source of these allegations. At no point in time has the NRC contacted me or my representative regarding its investigation.

10. I have been informed that Mr. Ellison has given the NRC a tape recording of a telephone conversation or conversations between me and Mr. Fortuna which occurred in January 1987. To the best of my recollection, I called Mr. Fortuna from my hotel room the evening before I met with the Department of Justice regarding the Padovano case. Mr. Ellison was in the hotel room with me at that time. When I called Mr. Fortuna, Mr. Ellison went into the bathroom. Although he did not have my consent to do so, Mr. Ellison picked up the telephone extension in the bathroom. I did not say anything to Mr. Ellison at that time because I did not wish to alarm Mr. Fortuna by making him aware that

someone was listening in on our conversation.

11. It has now been over two years since this incident occurred. My original recollection was that I had only one conversation with Mr. Fortuna. I have since been told that the tape recording that Mr. Ellison turned over to the NRC contains two conversations. To the best of my recollection, I may have ended one telephone conversation with Mr. Fortuna and then called him right back because I had forgotten something.

12. At the time of my conversation or conversations with Mr. Fortuna, I was not aware that Mr. Ellison was taping us. It was only after I got off the telephone that I saw Mr. Ellison with his tape recorder. I then asked Mr. Ellison to give me the tape, but he refused.

13. My own association with Mr. Ellison ended in the summer of 1987. I ended that association because I believed that Mr. Ellison was being less than honest and forthright with me.

14. It has come to my attention that Mr. Ellison has alleged that Mr. Fortuna disclosed information to me about ongoing investigations being conducted by his office. In my opinion, Mr. Fortuna has never discussed confidential information with me about investigations being conducted by his office.

15. My own purposes in contacting Mr. Fortuna were two-fold: First, I hoped to be able to provide Mr. Fortuna with information on safety violations that his office could investigate. Second, I

wished to keep Mr. Fortuna advised of my other initiatives, such as going to the Department of Justice. I felt the latter was important since his office had been involved in investigating the Padavano matter.

16. As a citizen who is concerned about nuclear safety, I feel that Mr. Fortuna has always been willing to listen to me. That is more than I can say for others in the NRC, such as its chairman, Lando W. Zech, and Victor Stello, Director of Operations. Instead of listening to me, Mr. Zech and Mr. Stello have responded to my concerns by having me ejected from public meetings and having me subjected to various forms of harassment and intimidation. Mr. Zech and Mr. Stello also have refused to reply to several letters that I have sent to them. Mr. Zech also has rejected several of my requests to address the Commission on issues related to evacuation planning for the elderly and handicapped. As an American citizen, I feel I have a right to express my concerns to government officials and I do not feel that Mr. Fortuna should be disciplined for having the courtesy to listen to my concerns.

17. I have been told that Mr. Ellison approached the NRC with his allegations about Mr. Fortuna in September 1988. In May 1988, I was contacted by Mr. Ellison and told that he had offered to sell certain information to Niagra Mohawk. Mr. Ellison stated that he did not wish to do this and wanted to give me an opportunity to "purchase" the information. Mr. Ellison was advised by both me and by legal counsel for We the People that

we believe such activity to be inappropriate.

I have read the above affidavit consisting of 7 pages and it is true and accurate to the best of my knowledge and recollection.

Stephen B Comley

Stephen B. Comley

SWORN AND SUBSCRIBED to before me this 18th day of April 1989.

Diane E Erhard

Notary Public

My Commission expires: 4/25/91